UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PHILIP KOSOWSKY and GARY COTON, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. ICAHN ENTERPRISES L.P., ICAHN ENTERPRISES HOLDINGS L.P., ICAHN ENTERPRISES G.P. INC., CARL C. ICAHN, ARIS KEKEDJIAN, DAVID WILLETTS, TED PAPAPOSTOLOU, KEITH COZZA, and SUNGHWAN CHO, Defendants.	Case No. 1:23-cv-21773-KMM **CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** **JURY TRIAL DEMANDED**

TABLE OF CONTENTS

Lead Plaintiff Philip Kosowsky and plaintiff Gary Coton (collectively "Plaintiffs"), individually or behalf of themselves and all others similarly situated, by and through their attorneys, allege the following upon information and belief, except as to those allegations concerning each Plaintiff individually, which are alleged upon their respective personal knowledge.[1] Plaintiffs' information and belief is based upon, among other things, the investigation of their counsel, which includes, without limitation: (a) review and analysis of regulatory filings made by Icahn Enterprises L.P., Icahn Enterprises Holdings, L.P., and Icahn Enterprises G.P. Inc., (collectively "Icahn Enterprises" "IEP," or the "Company") with the United States ("U.S.") Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases, conference call transcripts, and media reports issued by and disseminated by Icahn Enterprises; and (c) review of other publicly available information concerning Icahn Enterprises.

INTRODUCTION AND OVERVIEW OF THE ACTION

1. This is a class action on behalf of all persons and entities that purchased or otherwise acquired Icahn Enterprises' depositary units, traded on the NASDAQ exchange, between August 2, 2018 and August 3, 2023, inclusive (the "Class Period") asserting claims against the Defendants named herein for engaging in a fraudulent and deceptive scheme and course of conduct, including the dissemination of a series of false, deceptive, and misleading statements and material omissions, in violation of the Securities Exchange Act of 1934 (the "Exchange Act") and Rules 10b-5(a)-(c) thereunder, causing Plaintiffs and Class members (as defined below) to suffer damages.

2. Defendant IEP is a master limited partnership holding company and equity fund, owning several subsidiaries engaged in a variety of business segments, including, as

[1]On November 20, 2023, the Court granted Philip Kosowsky's Motion for Appointment as Lead Plaintiff and Approval of Counsel (ECF No. 20) and appointed Philip Kosowsky as the Lead Plaintiff. (ECF No. 82). The caption of this Consolidated Complaint reflects that appointment.

one significant segment during at all times material, an Automotive Group Division, which included its Auto Parts Plus business.

3. During and throughout the Class Period, Defendant Carl C. Icahn ("Icahn") and his affiliates held approximately 85% of IEP's outstanding "depositary units." These are securities registered with the United States Securities and Exchange Commission ("SEC"). Icahn was, in effect, the Company's majority and controlling unitholder. Icahn is well known on Wall Street as a "corporate raider" and "activist," who has achieved a public reputation of taking over distressed assets or companies and increasing their value. Icahn founded IEP in 1987. It became one of the very first private equity funds to go public, when, in 1990, it offered depositary units that were not owned or controlled by Icahn and his affiliates, at $12.50 per unit to the investing public.

4. Commencing in late October 2013, through early December 2014, IEP units traded on the NASDAQ exchange at over $100 per unit, reaching as high $148.53 per unit at the close of trading on December 9, 2013. But, for prolonged periods of time commencing in January 2016, the trading price of IEP units languished in the $50s, sometimes closing in the $60s, or at other times in the $40s. On February 27, 2018, IEP closed at $56.05 per unit, after which the trading price rose to a close of $62.05 per unit following IEP's announcement of a quarterly distribution ("dividend") increase from $1.50 per unit to $1.75 per unit – the first increase since March 2014.

5. The IEP unitholders enjoyed a healthy dividend of $1.75 per unit for four straight quarters despite inconsistent financial metrics of performance during those quarters. With such a consistent dividend, IEP's unit price stabilized, climbing into the $60s and the $70s per unit, reaching as high as $80.32 at the close of trading on August 8, 2018, following IEP's August 2, 2018, disclosure of financial results for its second quarter 2018, ending June 30, 2018, commencing the Class Period.

6. By the advent of the Class Period on August 2, 2018, Icahn had incurred massive personal margin loan indebtedness. Near the end of the Class Period, it would be

disclosed to the market for the first time that his personal margin loan had ballooned to $3.7 billion. At all times material to the Class Period until July 10, 2023, Mr. Icahn's massive personal margin loans, collateralized by his IEP holdings and his other personal assets, had been subject to debt covenants that required the maintenance of a loan-to-value ("LTV") ratio tethered to IEP's per unit trading price. Neither Mr. Icahn, IEP, nor any of the Individual Defendants herein, when communicating with the market about dividend risk, ever disclosed the risk that the amount of any Company quarterly dividend distributed to its investors would be or could be adversely affected by the violation of Mr. Icahn's **personal** debt covenants, and specifically the LTV ratio linked to IEP's unit price associated with his massive $3.7 billion margin loans, or the delinkage of those LTV ratio covenants and IEP's unit trading price. None of the Defendants was transparent with respect to this highly significant and material risk, which only became apparent after the close of the Class Period, following four years and 16 consecutive quarters of distributing a $2 per unit quarterly dividend declared by the Icahn controlled Board, even amid inconsistent financial results.

7. Throughout the Class Period, Icahn and the Individual Defendants engaged in an undisclosed scheme to use heightened dividend yields as an inducement to buoy or inflate the trading price of IEP units as investors clamored to invest in a so-called "dividend stock," ostensibly offering increased asset values ("dividend inducement scheme"). IEP was paying over that period of time an extremely high rate of return on investment. This dividend inducement scheme was aided by Defendants' lack of transparency, threaded with false and misleading statements, and material omissions, deceiving the market to perceive a picture of the Company in which significant quarterly dividends were linked to its liquidity, no matter whether the Company had a profitable or comparably favorable quarter or not.

8. Defendants' ongoing lack of transparency ultimately caused one major analyst, UBS, to withdraw coverage of the Company in January 2020. All the while, the amount of Mr. Icahn's personal indebtedness – later disclosed on July 10, 2023, to be $3.7 billion – was never clearly or adequately revealed to the market. And investors were kept in

the dark regarding the dividend inducement scheme. Any delinkage of loan-to-value ratios in his debt covenants so that they would no longer be tethered to IEP's unit trading price, was a significant and material risk, since it would then no longer serve as a motive for Mr. Icahn and the Board he controlled to continuously declare dividends of $2 per unit per quarter, quarter after quarter, year after year, despite inconsistent financial metrics during that period of time.

9. Upon announcing the quarterly distribution hike from $1.75 per unit to $2.00 per unit, IEP's press release disclosing financial results, filed with the SEC on Form 8-K on February 28, 2019, exclaimed, with reference to that increase, that "Icahn Enterprises has a long history of endeavoring to return capital to its unitholders by delivering and paying ***significant and consistent annual distributions***." (Emphasis added). This statement further advanced the impression and picture in the market of a consistent quarterly distribution profile throughout the Class Period, which induced investor demand, thereby inflating IEP's unit trading prices above what they would have traded at had this tactic and undisclosed dividend inducement scheme to insulate Mr. Icahn from a massive margin call not been deployed.

10. Meanwhile, investors were repeatedly informed about IEP's "ample liquidity at the holding Company and at each of our operating subsidiaries," with a repeated refrain that "[i]n summary, we continue to focus on building asset value and meeting ample liquidity to enable us to capitalize on opportunities …" IEP's liquidity was central to the heightened dividend and investment yield, or so the market was deceived to perceive. However, Defendants failed to disclose and concealed the fact that it was nonetheless necessary to engage in repeated and significant offerings to secure cash needed to fund the dividend inducement scheme.

11. In the face of an inquiry during a quarterly conference call about dividend "sustainability," and funding, IEP's CFO responded "funding the dividend is not necessarily an issue for us whatsoever. We do like our current capital allocation policy. As you know,

we just approved a $2 dividend for the quarter, which has been consistent with relatively past practices. And I think we ***intend on continuing*** that, at least at this point in time, unless things change." (Emphasis added). Still, the significant and material risk occasioned by Mr. Icahn's personal and massive margin loans and inadequately disclosed debt covenants and LTV ratios tethered to IEP's unit trading price, remained hidden, and not adequately disclosed. The market remained confounded and deceived.

12. On August 6, 2021, when a "retail investor" analyst noted with respect to the amount of annual dividends, "some people are starting to say that Carl Icahn is getting on and look at that dividend. I mean what do you have to say about that dividend when the stock is trading at $58 and paying an $8 dividend? There aren't too many companies doing something like that," Icahn Enterprises' CEO responded, "we definitely have a high dividend yield and that's one of the factors that makes the stock attractive. So I think you're highlighting that fact" – again, confounding investors and failing to apprise them of the underlying significant risk and dividend inducement scheme associated with Mr. Icahn's personal – not corporate – indebtedness that had ballooned to $3.7 billion.

13. In its third quarter 2021 conference call of November 2, 2021 (the "Third Quarter 2021 Conference Call"), the Company's CEO spoke about the Company's annual dividend yield stating "[w]e have the capital flexibility to maximize the activist strategy. This track record has allowed IEP to pay 66 consecutive distributions to its unitholders … while ***increasing the distribution over time***. On November 1, 2021, the IEP Board declared a $2 quarterly distribution. This represents a healthy annual yield of 14% asset value."

14. During the conference call, IEP's CEO reminded the market that "the Company uses Indicative Net Asset Value as an additional method for considering the value of the Company's assets …" and that it was "more indicative" of value, than generally accepted accounting principles ("GAAP"). However, unbeknown to investors, the so-called "Indicative Net Asset Value," not governed by GAAP, could more easily be manipulated. Defendants manipulated certain valuation metrics, thereby presenting an inflated "Net Asset

Value" ("NAV") to investors. Indeed, there were several discrepancies in IEP's valuation methodology that resulted in materially inflated NAVs, which was only disclosed – and not by Defendants – commencing May 2, 2023. During the Class Period, so-called "Indicative Net Asset Value" engineered by Defendants, exceeded GAAP governed NAVs by 24.3% in 2019, 44.5% in 2021, and 144.7% in 2022.

15. Defendants' deceptive dividend inducement scheme worked, creating an ongoing false impression and picture of IEP in the market during the Class Period. Swayed by the deception, for example, by November 9, 2021, sell-side analyst firm Jefferies presented a "long view" analysis of IEP indicating a "[c]onstant dividend of $8.00/sh into perpetuity." Jefferies maintained this periodic analysis throughout the Class Period, reiterating it as late as February 28, 2023.

16. Regarding asset valuation, IEP's deceptive and misleading valuation methodology was particularly significant with regard to its Automotive Group holdings, including its Automotive Services, Automotive Parts, and Automotive Real Estate segments. Beginning in IEP's third quarter ending September 30, 2021, the Company chose to apply a different valuation methodology to its Automotive Real Estate segment, claiming it would "provide a more meaningful measure of the assets after- market value." As a consequence, the "Indicative NAV" of the Automotive Group segment was increased by approximately $1.0 billion, from $1.516 billion as of June 30, 2021 to $2.54 billion as of September 30, 2021. This change was suspiciously timed given the Company's disclosure that the COVID-19 pandemic had negatively impacted the Automotive Group's business, prompting an acceleration of store closures, which would normally result in a reduction in value absent the manipulation, rather than a doubling of value.

17. In truth, the Automotive Parts Plus portion of the Automotive Group was marching toward bankruptcy. Just a little more than a year later, in January 2023, IEP's Automotive Parts segment filed for Chapter 11 bankruptcy. Its true Indicative NAV was zero dollars. The true value of the Automotive Group real estate was significantly reduced

to $831 million and Automotive Services to $573 million. The Automotive Group value was 45% lower. However, despite the fact that the Automotive Parts segment of the Automotive Group was headed towards and verging on bankruptcy, which would have been readily known to IEP's management well before it filed bankruptcy on January 31, 2023, no charge was taken with respect to the impairment of that asset in the fourth quarter of 2022, ending December 31, 2022 – which, at a minimum, should had been taken at least by no later than that quarter, and in fairness to investors, even sooner. The impairment charge was material, amounting to $226 million, though its booking was delayed until after fourth quarter 2022 results were announced on February 24, 2023, and after the November 21, 2022, announcement of an offering of additional units valued at up to $400 million, which resulted in the sale of 3,942,226 units, for proceeds of $202 million, in the fourth quarter of 2022 and additional sales of 3,395,353 units, for proceeds of $175 million, in the first quarter of 2023.

18. It was only in a February 24, 2023 conference call announcing the Auto Parts bankruptcy that Defendant CEO Willetts, in a moment of frankness, felt compelled to acknowledge "a number of items that were not to our liking", and that IEP needed to "post an excess and obsolete inventory methodology" adding that "frankly, there are other items that we had to recognize that ***should have been recognized perhaps a little bit more promptly*** than they have been between Q4, and Q1, 2 and 3." (Emphasis added).

19. On May 2, 2023, amid an ongoing lack of transparency, inflated asset valuations, and delaying an impairment charge of $226 million, while consistently giving $2 per unit per quarter dividend year after year after year, and quarter after quarter, despite inconsistent financial performance, a sophisticated expert at Hindenburg Research was finally able to connect the dots. Knifing through this veil of deceit, this Hindenburg Research report (the "Hindenburg Report" or "Report") started the process of the emergence of the truth, partially correcting the artificial inflation embedded in IEP's unit price tainted by Defendants fraudulent scheme and course of conduct over the Class Period, laced with deceptive misrepresentations and material omissions. The Hindenburg Report noted

numerous problems camouflaged by the Company's lack of transparency and deception, including its over-valuation of assets, while predicting that circumstances were such that the Company could not sustain the $2 per unit per quarter dividend going forward, as more fully discussed below.

20. The Hindenburg Report disclosed, among other things, that IEP's "last reported indicative year-end [net asset value] of $5.6 billion is inflated by at least 22%," noting that IEP was "using money taken in from new investors to pay out dividends." Hindenburg reported that "our research has found that IEP units are inflated by 75%" and "we've uncovered clear evidence of inflated valuation marks," while noting that in comparison to "all 526 US-based closed end funds (CEFs) in Bloomberg's database, Icahn Enterprises' premium to NAV was higher than all of them and more than double the next highest we found," while commenting that IEP's "outlier[]" dividend "is entirely ***unsupported*** by IEP's cash flow and investment performance." The Report noted that when IEP hiked the quarterly dividend from $1.75 per unit to $2.00 per unit, IEPs free cash flow was negative $1.7 billion that same year. The Report identified specific instances of significant and material asset overvaluation, while noting that "the irregular valuation marks fit a pattern." Importantly, the Report made clear that "Icahn has not disclosed basic metrics around his margin loans like loan-to-value (LTV), maintenance thresholds, principle amount, or interest rates" adding "[w]e think ***unitholders deserve this information in order to understand the risk of margin calls should IEP unit [trading] prices revert toward NAV***, a reality we see as inevitable," and predicted that IEP "will eventually cut or eliminate its dividend entirely", among other adverse *observations*. (Emphasis added)

21. Still, the Report did not fully disclose or appreciate still undisclosed dividend risk associated with Icahn's own massive $3.7 billion margin debt covenants inextricably linked to IEP unit trading prices, placing investors at Icahn's mercy owing to his personal margin debt and deliberate dividend inducement scheme deployed to insulate himself from a massive margin call.

22. After the Report was disclosed, IEP's unit price fell $10.06 a unit, or 20% to close at $40.36 per share on May 2, 2023, and continued to decline, losing about $7.5 billion in value through May 4, 2023 – totaling a 40% decline.

23. Rather than allowing the light of day – the whole truth – to reach the market and remove the tainted inflation embedded in IEP's unit trading price, Mr. Icahn doubled down forcefully, while trying, deceptively, to portray Hindenburg as villain. To that end, on May 4, 2023, in a Company press release, IEP and Mr. Icahn chose to "reassure our long-term unitholders" that the claims of the Hindenburg Report "does not affect IEP's liquidity," adding "we are announcing now our intention to declare a distribution in the amount of $2.00 per depositary unit for the quarter ended March 31, 2023…." Icahn further stated that "[t]he fundamentals of our business, and our belief in the activist paradigm … remain unchanged. [W]e obviously disagree with the inflammatory assertions in the Hindenburg Report and intend to … vigorously defend IEP and its unitholders." In the press release, the Company "encouraged" all investors to review IEP's filings with the Securities and Exchange Commission "to receive accurate information about the Company."

24. This May 4, 2023 double-down retort and stratagem caused IEP's unit price to climb from a close of $30.09 on May 4, 2023, on heavy volume, to reach as high as $38.13 per unit during May 5, 2023, though it closed somewhat lower on that day, closing at $37.97 on May 9, 2023, on volume of almost 11 million units.

25. However, on May 10, 2023, before the market opened, IEP was compelled to file a Report on Form 10-Q with the SEC for the quarter ending March 31, 2023, disclosing that the U.S. Attorney's Office for the Southern District of New York had "contacted" IEP "seeking production of information" regarding, *inter alia*, IEP's valuation practices. With the U.S. Attorney's office now involved, IEP further reported a $226 million impairment charge related to Auto Plus – which Hindenburg had identified as over-valued.

26. The news sent IEP unit prices spiraling again, declining $5.75 per unit, or 15.1% to close at $32.22 on May 10, 2023. Unbowed, Icahn and the IEP Board he chaired

and controlled issued a press release at 11 a.m. Eastern on May 10, 2023, hypocritically entitled "Icahn Enterprises Responds to Self-Serving Short Seller Report," intended to blunt the impact of the Report and the government's inquiry, emphasizing its claimed "strong balance sheet, with $1.9 billion of cash and $4 billion of additional liquidity," noting that "[t]he good news for IEP's investors is that we have Carl, the liquidity, the strategy and the know-how to fight back." IEP's May 10, 2023 Press Release accused the Hindenburg Report of "misleading and self-serving claims." IEP's May 10, 2023, retort and denial still concealed the looming risk associated with Mr. Icahn's personal $3.7 billion margin loan covenants that at the time had LTV ratios linked to IEP's unit trading price, and the dividend inducement scheme that was still being deployed, camouflaged by the announcement of a $2 per unit quarterly dividend for the first quarter of 2023. Continuing to be buoyed and inflated by embedded artificial inflation due to the ongoing deception, IEP's unit price rose to $35.40 after the close of trading on May 10, 2023, until majority and controlling unitholder Icahn, forced to abandon the dividend inducement scheme, started the process of pulling the rug out from under the minority investor Class Members.

27. On July 10, 2023, it was disclosed and reported that Mr. Icahn restructured his personal margin loan. Faced with a massive margin call scenario, Icahn engaged in the restructuring with his personal lenders "to remove a link between his obligation to post collateral and his holding Company's 'share price.'" It was disclosed that he had used about 60% of his stake in IEP to borrow from a group of funds and was obliged to post even more collateral as the stock dropped. Reuters reported that Icahn's requirements to post more collateral was now tied to "IEP's Indicative Net Asset Value" rather than IEP's share price, and that in an amended loan agreement, Mr. Icahn "agreed to provide additional collateral of $2 billion from his personal funds and $320 million IEP shares."

28. On this news, IEP's unit trading price increased from a close of $28.86 on July 7, 2023 to a close of $34.69 on July 10, 2023. It remained in the low $30's until the true

import and consequences of the changed LTV ratio linkage and the scheme concealed during the Class Period was harshly revealed on August 3, 2023.

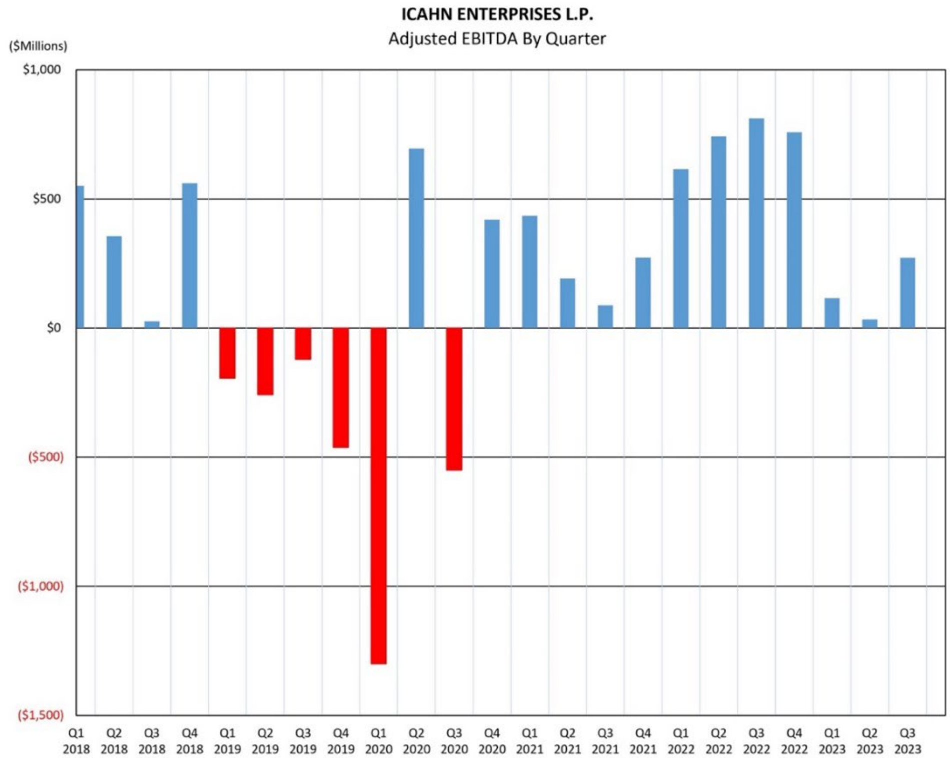
29. With Icahn's personal LTV ratio debt covenants no longer tied to IEP's trading price, he was no longer motivated to continue the dividend inducement scheme in order to avoid a massive margin call. The many years and numerous quarters of declaring $2 per unit quarterly dividends to buoy or inflate IEP's trading price in both profitable and unprofitable quarters was coming to an abrupt end. Despite announcing a $2 per unit dividend for the first quarter of 2023, and despite supposedly "turning the corner" in July 2023 and claiming, in response to the Report, that IEP did not intend to let the Hindenburg Report "interfere with this practice," Icahn and IEP lowered the boom on investors by revealing that "IEP is declaring a $1.00 per depositary unit distribution" for the second quarter of 2023 – which was lower than it had been even before August 6, 2013 – ten years earlier.

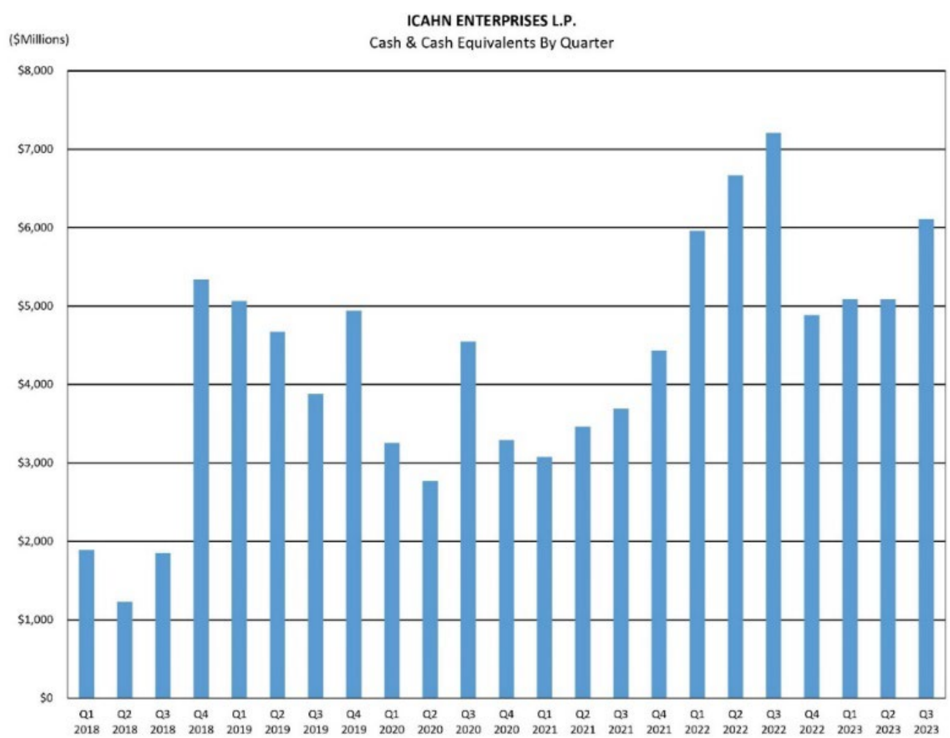
30. On this news, the trading price of IEP's unit declined substantially from $32.68 per unit at the close of trading on August 3, 2023, to a close of $25.09 on August 4, 2023, on historic volume of over 11.28 million units in a single day – reflecting a stunned and deceived market – and continued to decline to a close of $16.42 per unit on November 21, 2023.

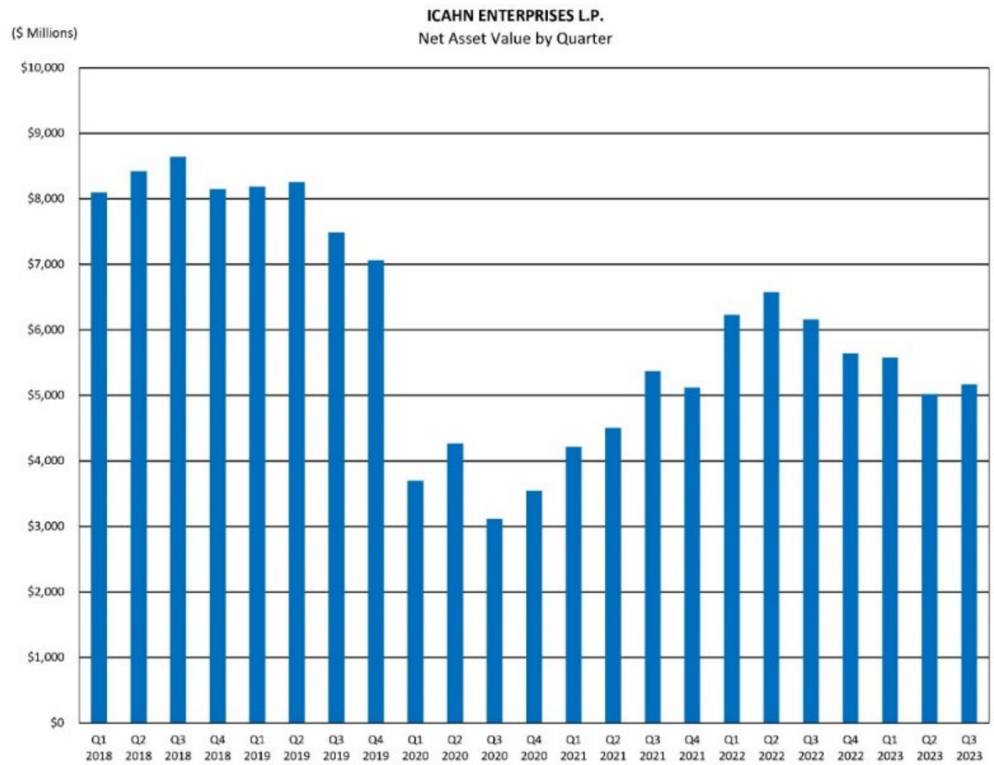
31. The fraudulent and deceptive representations, omissions, and scheme, buoying and inflating the trading price of IEP units until the truth was finally revealed by the close of the Class Period, removing the artificial inflation caused by Defendants violation of our Nation's securities laws designed to maintain the integrity of our capital markets, caused Plaintiffs and Class Members to suffer significant damages, for which they seek a recovery.

32. Below are a series of charts and graphs illustrating the payment of heightened dividends in the face of IEP's varying and inconsistent range of financial performance metrics, and illustrating its range of liquidity, evincing that the declaration of a $1 per unit dividend ending the Class Period was inconsistent with IEP's ongoing prior practice, despite

the relative performance metrics and liquidity ranges previously, and graphically illustrating the dividend inducement scheme, as described above.






ICAHN ENTERPRISES L.P.
Net Asset Value by Quarter
($ Millions)
$10,000
$9,000
$8,000
$7,000
$6,000
$5,000
$4,000
$3,000
$2,000
$1,000
$0
Q1 2018
Q2 2018
Q3 2018
Q4 2018
Q1 2019
Q2 2019
Q3 2019
Q4 2019
Q1 2020
Q2 2020
Q3 2020
Q4 2020
Q1 2021
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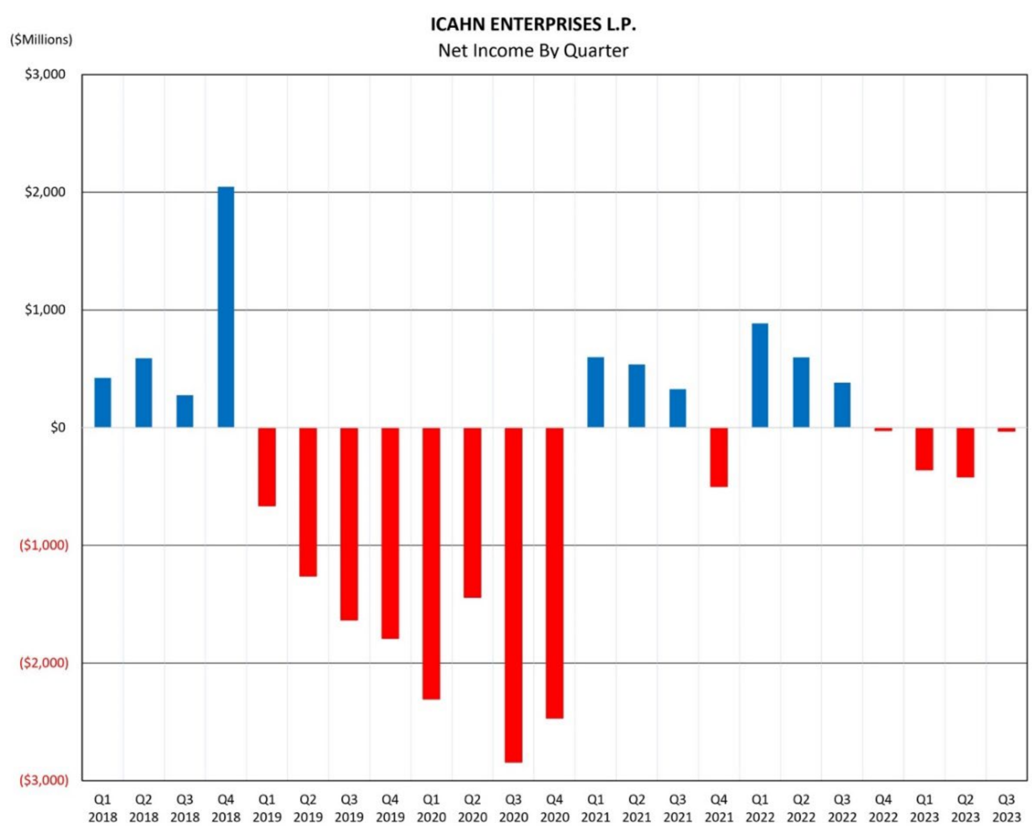
Q2 2023
Q3 2023


ICAHN ENTERPRISES L.P.
Net Income By Quarter
($Millions)
$3,000
$2,000
$1,000
$0
($1,000)
($2,000)
($3,000)
Q1 2018
Q2 2018
Q3 2018
Q4 2018
Q1 2019
Q2 2019
Q3 2019
Q4 2019
Q1 2020
Q2 2020
Q3 2020
Q4 2020
Q1 2021
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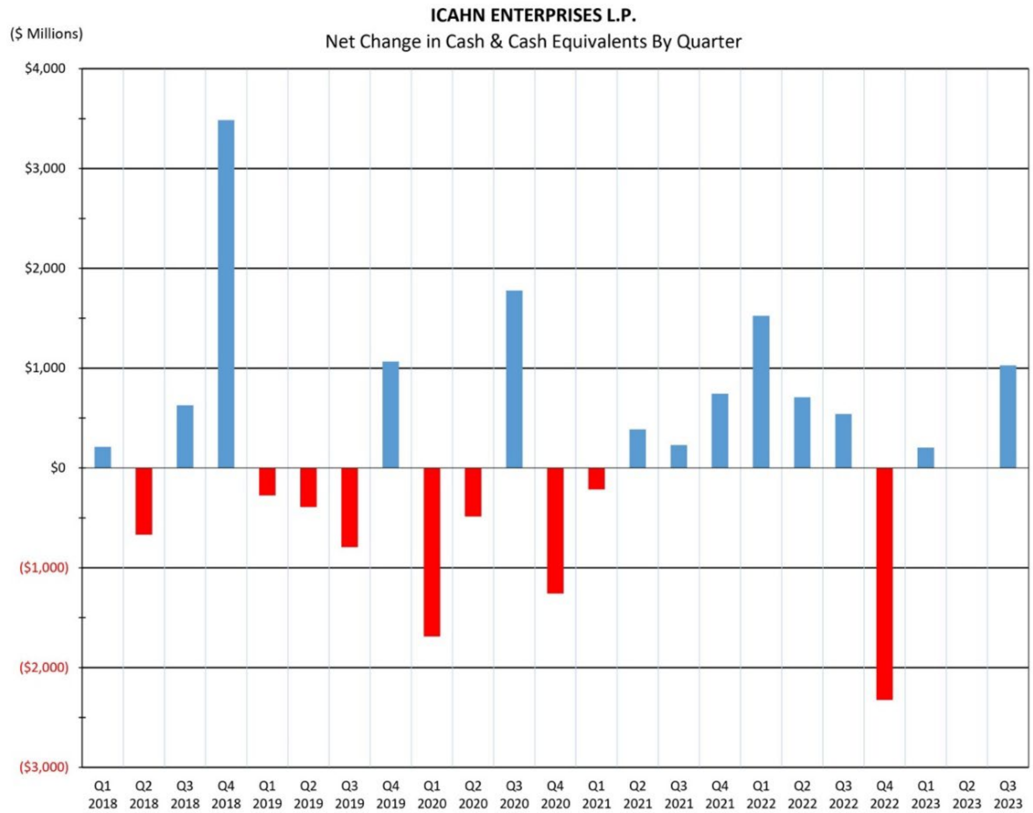
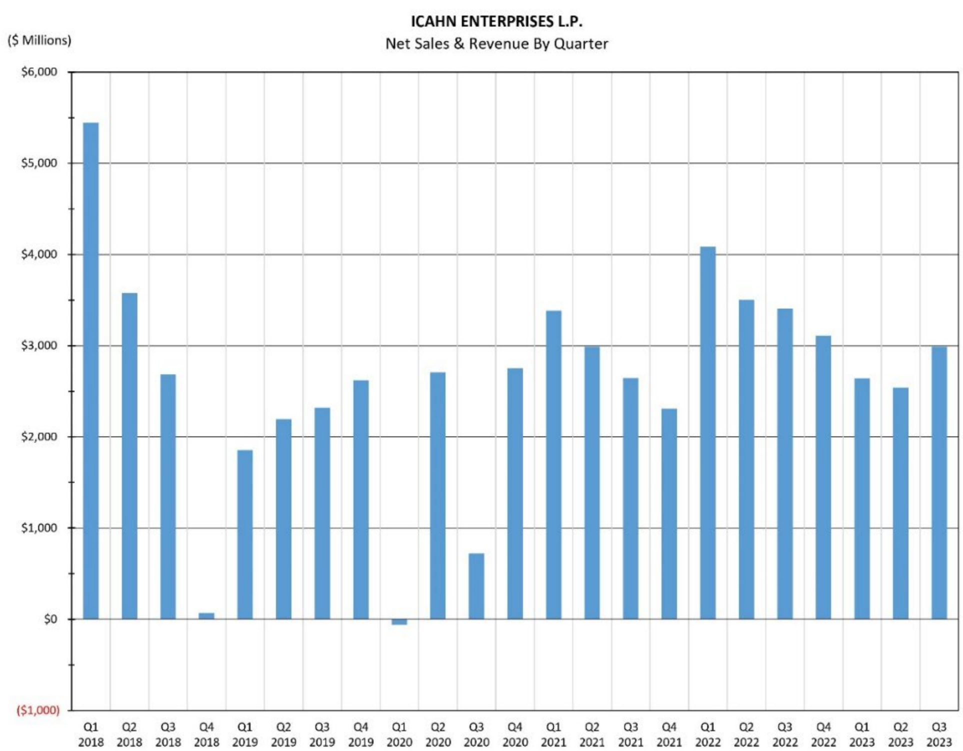
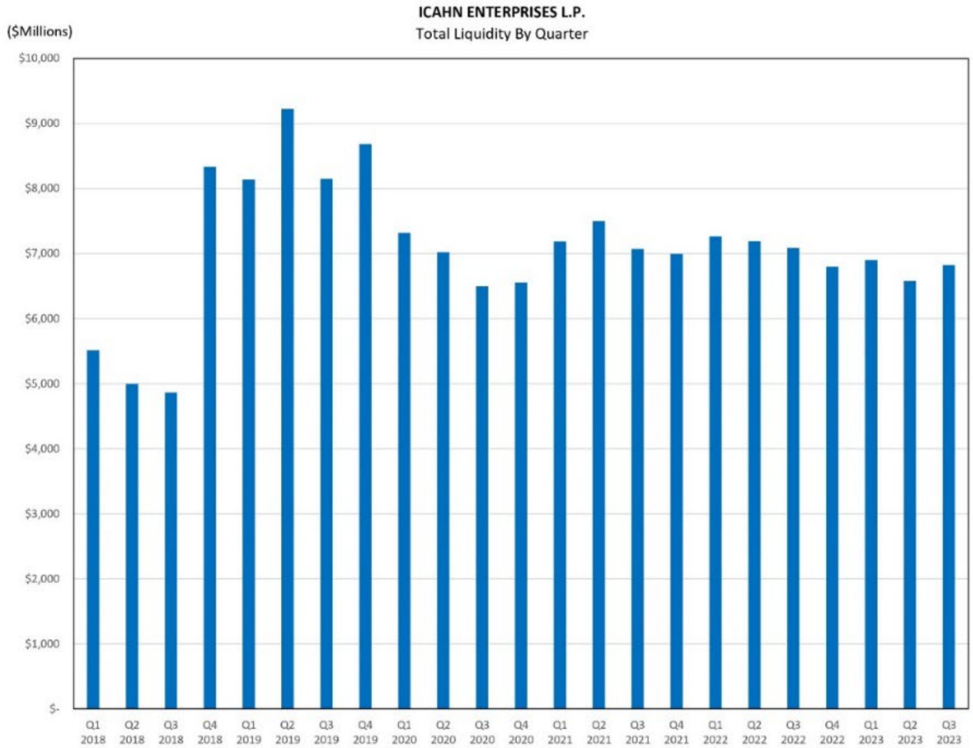
Q1 2023
Q2 2023
Q3 2023


ICAHN ENTERPRISES L.P.
Net Change in Cash & Cash Equivalents By Quarter
($ Millions)
$4,000
$3,000
$2,000
$1,000
$0
($1,000)
($2,000)
($3,000)
Q1 2018 Q2 2018 Q3 2018 Q4 2018 Q1 2019 Q2 2019 Q3 2019 Q4 2019 Q1 2020 Q2 2020 Q3 2020 Q4 2020 Q1 2021 Q2 2021 Q3 2021 Q4 2021 Q1 2022 Q2 2022 Q3 2022 Q4 2022 Q1 2023 Q2 2023 Q3 2023


ICAHN ENTERPRISES L.P.
Net Sales & Revenue By Quarter
($ Millions)
$6,000
$5,000
$4,000
$3,000
$2,000
$1,000
$0
($1,000)
Q1 2018 Q2 2018 Q3 2018 Q4 2018 Q1 2019 Q2 2019 Q3 2019 Q4 2019 Q1 2020 Q2 2020 Q3 2020 Q4 2020 Q1 2021 Q2 2021 Q3 2021 Q4 2021 Q1 2022 Q2 2022 Q3 2022 Q4 2022 Q1 2023 Q2 2023 Q3 2023


ICAHN ENTERPRISES L.P.
Total Liquidity By Quarter
($Millions)
$10,000
$9,000
$8,000
$7,000
$6,000
$5,000
$4,000
$3,000
$2,000
$1,000
$-
Q1 2018
Q2 2018
Q3 2018
Q4 2018
Q1 2019
Q2 2019
Q3 2019
Q4 2019
Q1 2020
Q2 2020
Q3 2020
Q4 2020
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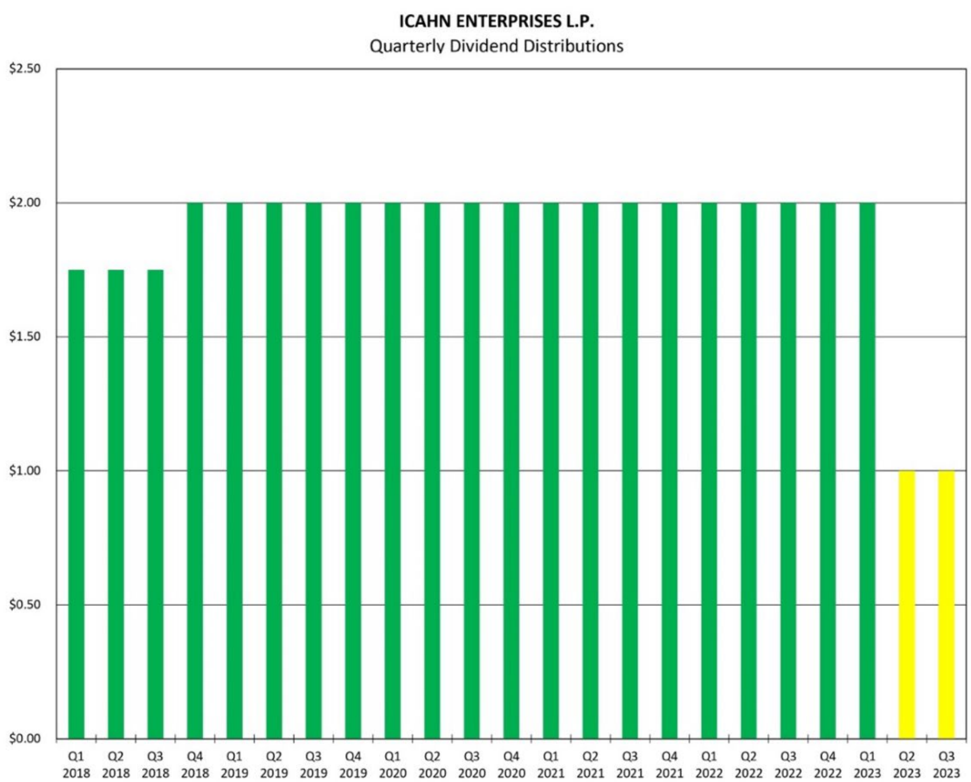
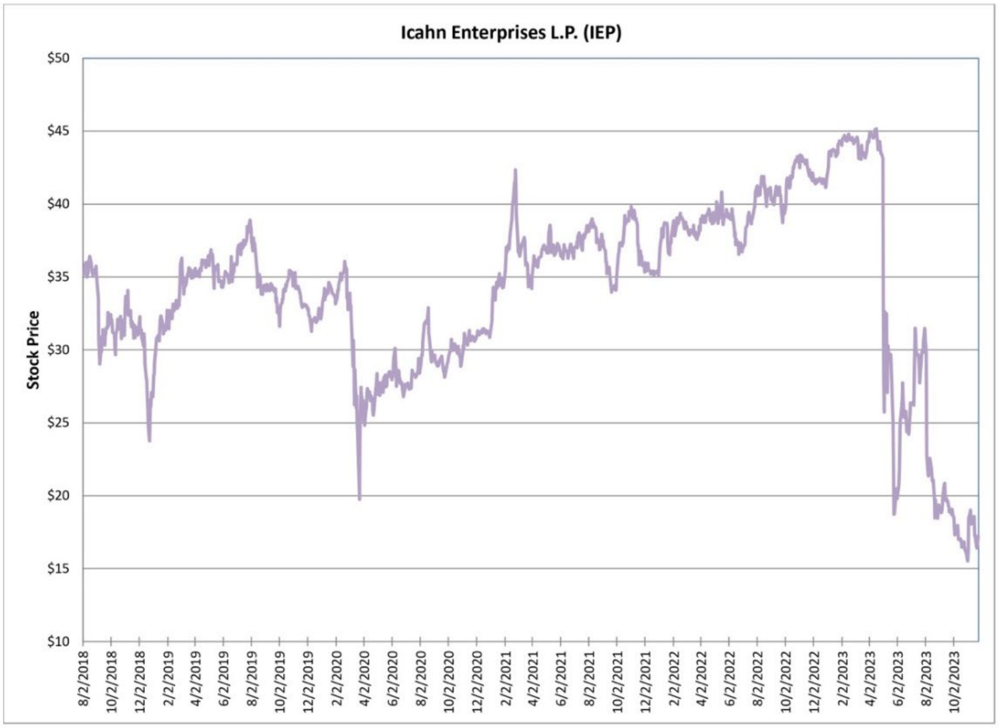
Q1 2023
Q2 2023
Q3 2023


ICAHN ENTERPRISES L.P.
Quarterly Dividend Distributions
$2.50
$2.00
$1.50
$1.00
$0.50
$0.00
Q1 2018
Q2 2018
Q3 2018
Q4 2018
Q1 2019
Q2 2019
Q3 2019
Q4 2019
Q1 2020
Q2 2020
Q3 2020
Q4 2020
Q1 2021
Q2 2021
Q3 2021
Q4 2021
Q1 2022
Q2 2022
Q3 2022
Q4 2022
Q1 2023
Q2 2023
Q3 2023

33. Below is IEP's unit price chart, demonstrating the trading price buoyed and inflated by Defendants' fraudulent and deceptive scheme, course of conduct until the corrective disclosures of May 2, 2023 and August 3, 2023:



JURISDICTION AND VENUE

34. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

35. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

36. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading

information, occurred in substantial part in this Judicial District. The Company's principal executive offices are also located in this Judicial District.

37. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

PARTIES

38. Lead Plaintiff Philip Kosowsky, as set forth in the accompanying certification, filed herewith as Exhibit 1, purchased Icahn Enterprises securities during the Class Period and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

39. Plaintiff Gary Coton, as set forth in the accompanying certification, filed herewith as Exhibit 2, purchased Icahn Enterprises securities during the Class Period and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

40. Defendant Icahn Enterprises L.P. is incorporated under the laws of Delaware with its principal executive offices located in Sunny Isles Beach, Florida. Icahn Enterprises' Depositary Units trade on the Nasdaq Global Select Market (the "NASDAQ") under the symbol "IEP."

41. Icahn Enterprises Holdings L.P. is incorporated in Delaware and headquartered in New York, New York. Throughout the Class Period, Icahn Enterprises Holdings, L.P. maintained the same officers and directors as Icahn Enterprises L.P and Icahn Enterprises G.P. Inc.

42. Icahn Enterprises G.P. Inc. is incorporated in Delaware and headquartered in Sunny Isles Beach, Florida. Throughout the Class Period, Icahn Enterprises G.P. Inc. maintained the same officers and directors as Icahn Enterprises L.P and Icahn Enterprises

Holdings, L.P.

43. Defendant Carl C. Icahn ("Icahn") was the Company's Chairman of the Board and majority and controlling IEP unitholder at IEP at all relevant times, and holds identical positions at Icahn Enterprises Holdings L.P. and Icahn Enterprises G.P. Inc.

44. Defendant David Willetts ("Willetts") has been the Company's President and Chief Executive Officer ("CEO") since November 8, 2021. Previously Willetts was the Company's CFO from April 5, 2021 until November 8, 2021. Willetts has been a member of the Board of Directors since April 2021 and holds identical positions at Icahn Enterprises Holdings L.P. and Icahn Enterprises G.P. Inc.

45. Defendant Ted Papapostolou has been the Company's Chief Financial Officer and a member of the Board of Directors since November 8, 2021. Defendant Papapostolou holds identical positions at Icahn Enterprises Holdings L.P. and Icahn Enterprises G.P. Inc.

46. Defendant Aris Kekedjian was the Company's President and Chief Executive Officer and a member of the Board of Directors from June 14, 2021 until November 8, 2021, and held identical positions at Icahn Enterprises Holdings L.P. and Icahn Enterprises G.P. Inc., during the same period.

47. Defendant Keith Cozza ("Cozza") was the Company's President and Chief Executive Officer and a member of the Board of Directors from 2014 until June 14, 2021, and held identical positions at Icahn Enterprises Holdings L.P. and Icahn Enterprises G.P. Inc., during the same period.

48. Defendant SungHwan Cho ("Cho") was the Company's Chief Financial Officer and a member of the Board of Directors from 2012 until April 2021, and held identical positions at Icahn Enterprises Holdings L.P. and Icahn Enterprises G.P. Inc., during the same period.

49. Defendants Icahn, Willetts, Papapostolou, Kekedjian, Cozza, and Cho (collectively the "Individual Defendants" and with Icahn Enterprises, collectively the

"Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e*., the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. IEP and the Individual Defendants are liable for the false statements pleaded herein.

SUBSTANTIVE ALLEGATIONS

Background Regarding Carl Icahn and His Private Equity Firm, IEP

50. IEP, founded by investor/activist Carl Icahn ("Icahn"), was incorporated as a Delaware corporation in 1987. Icahn was its most dominant shareholder and IEP was an embodiment of his personal empire. While it was a privately held equity fund, there was no public market for the sale or exchange of IEP depositary units ("units"). Mr. Icahn's unit ownership therefore was difficult to monetize or use to secure cash infusions to finance IEP's business and acquisitions or provide IEP with liquidity. And being a privately held company created greater difficulties for Icahn to use his unitholdings to secure personal loans since they had no readily available and efficient public market, especially since he was the "key" person and IEP was the embodiment of his personal investing skill, and acumen.

51. But, as a private company, Mr. Icahn enjoyed absolute authority and control over IEP. Serving as Chairman of the IEP Board of Directors, he could and did rule the

entity bearing his own name as he saw fit. It was in the truest sense his personal empire – his domain.

➢ **Creating a Public Market for IEP Units**

52. In order to create a readily available and efficient market for IEP units, it was necessary to take the company he founded public through an "Initial Public Offering," ("IPO") with the assistance of an underwriter. Mr. Icahn remained intent on maintaining near absolute control of the company that he founded. Thus, in order to maintain such dominance and control, he offered only a small amount of his IEP stock to the investing public in an IPO, ostensibly giving investors the opportunity to benefit from his sophistication and expertise, which had enabled him to amass a multi-billion dollar fortune through the acquisition of distressed companies he thereafter improved in value over the course of time. The decision of private equity firms to go public and thereby become publicly traded companies has been a trend that started with IEP being one of the first private equity companies to actually do so. IEP was taken public in 1990 through an IPO that raised $157.5 million by selling shares at $12.50 each. Since then, IEP has become one of the largest private equity firms in America.

➢ **The Benefit of Taking IEP Public Without Icahn Losing Control**

53. While private equity firms and their investors have traditionally been exclusive and private, going public provides significant benefits. When a private equity firm goes public through an IPO, the capital it raises can be used for various corporate purposes – it is not limited to just investing in other companies. For example, the funds raised in the open market can be used to repay company debts, fund growth initiatives respecting new products, funds or services, and create liquidity for senior partners at the firm.

54. The offering of IEP's units to the public, while still retaining almost absolute dominance and control, enabled Mr. Icahn to unlock a number of advantages. **First**, creating a public market for his IEP units enabled him to increase the value of his own units inexorably through public representations regarding the company's financial performance and, especially, through the vehicle of issuing per unit distributions ("dividends") to unitholders. These dividends were determined by Mr. Icahn and rubber-stamped by IEP's board of directors, which he controlled from IEP's inception and through the Class Period as IEP's ultra-dominant unit holder – owning approximately 85% of IEP's publicly traded units even after going public. **Second**, the public market for IEP depositary units benefitted Mr. Icahn, who held the vast majority of those shares, since any increase in the trading price of such IEP securities would not only inure to the financial net worth and benefit of investors who purchased and held those units, but would also greatly inure to the benefit of Mr. Icahn personally. **Third**, IEP units could be used as debt collateral for Mr. Icahn's personal borrowings, making it far easier and less burdensome for him to secure loans since there was a definable public market for his units, which could be valued and readily liquidated by lenders. **Fourth**, going public created opportunities to sell units of IEP on the open market via the vehicle of so-called "secondary offerings" in order to raise capital for IEP, which could bolster IEP's liquidity and provide needed infusions of operating capital for the costs and expenses of operations. **Fifth**, with a public market for its units, IEP could repurchase its own units, thereby bolstering its stock price, while even paying insiders such as Mr. Icahn for the repurchase of their shares. **Sixth**, the fact that IEP was now publicly traded made it easier for Mr. Icahn and IEP to then use IEP publicly traded units as currency to acquire other companies to be included in IEP's asset portfolio, and consequently leverage its portfolio of assets.

55. Ultimately, over the course of a number of offerings – both the initial public offering of 1990, raising $157.5 million, and secondary offerings occurring thereafter, Mr. Icahn sold a total of 15% of IEP shares to the public. During the Class Period alone, IEP

sold over $1.5 billion of its units in secondary offerings.

➢ **IEP Dividend Distributions Prior to the Class Period**

56. Distributing dividends on a quarterly basis to unitholders was an ongoing practice by IEP's Icahn-controlled Board. For example, the quarterly dividend increased significantly to $0.50 per quarter commencing May 12, 2011, increasing again to $1.00 per depositary unit on August 17, 2013.

57. By way of background, on August 7, 2013, the Company issued a press release reporting its financial results for the second quarter of 2013, ending June 30, 2013, stating net income of $54 million, or $0.48 per unit compared to $257 million, or $2.37 per unit for the second quarter of the prior year, and second quarter 2013 Adjusted EBITDA of $277 million compared to $506 million in the same quarter of the prior year. The press release reported that Mr. Icahn stated "I am happy to report that for the six months ended June 30, 2013, our Net Asset Value per unit was up from $57 to $64, an increase of 12%," adding "I am also happy to state, that in July, our Net Asset Value per unit was up another $7 to $71 per unit, an increase of 11% for the month, equating to an increase year to date in Net Asset Value of 25%. The increase in July was driven by strong performance from our Investment and Automotive segments." It was further announced that during the second quarter of 2013, the Board approved "a modification to Icahn Enterprises distribution policy" and provided for a quarterly distribution increase to $1.25 per depositary unit to be paid October 9, 2013.

58. Considering further background that, on March 3, 2014, the Company issued a press release announcing fourth quarter and fiscal year 2013 financial results, stating a "record 2013 net income attributable to Icahn Enterprises of $1.0 billion or $9.07 per LP unit" (which was an increase of 144% versus FY 2012), and a "record 2013 Adjusted EBITDA attributable to Icahn enterprises of $1.9 billion." At the same time, it

was announced that the Board approved an increase in the quarterly distribution to $1.50 per depositary unit, from a $1.25 quarterly dividend previously. According to the March 3, 2014 press release, "Mr. Icahn stated 'I am pleased to report record earnings in 2013…[a]s a result of our strong performance and positive outlook, we are happy to increase the distribution by 20%.'"

59. Just before the start of the Class Period, in a Company press release issued on March 1, 2018, it was announced that on February 27, 2018, the Board approved a quarterly dividend distribution of $1.75 per depositary unit – an increase from $1.50 per unit. Net income for 2017 was $2.4 billion or $14.80 per depositary unit – "the highest in our history" according to Carl Icahn. For the year ended December 31, 2017, "indicative net asset value increased to $7.9 billion compared to $5.6 billion as of December 31, 2016." Prior to the announced dividend increase, then closing daily trading prices of IEP depositary units remained mostly in the $50s per unit range since January 30, 2017, sometimes closing in the high $40s per unit, but not having closed at $60 or more since January 27, 2017, and never consistently in the $60s since May 4, 2016, albeit briefly flirting in the lower $60s per unit in the fourth quarter of 2016 and the first quarter of 2017.

60. Following the February 27, 2018 Board decision of $2 per unit dividends, IEP's trading price experienced a bounce, from a close of $54.58 on February 28, 2018, to $56.42 at the close of trading on March 1, 2018, after the public announcement, increasing thereafter to a close of $60.05 on March 5, 2018, and then to a closing price of $62.05 on March 8, 2018.

61. While the trading price of IEP units increased for a while thereafter, trading as high as $80.32 at the close of trading on August 8, 2018, it declined again, despite being artificially buoyed and inflated by Defendants' ongoing fraudulent scheme, misrepresentations, material omissions, and lack of transparency, confounding the market and deceiving investors, as more fully discussed below.

➢ **IEP's Appeal as the Proverbial "Dividend Stock"**

62. The decision to take IEP public, without losing any meaningful scintilla of control, presented the perfect environment by which Mr. Icahn could exploit turning his personal IEP units into a valuable marketable asset. IEP's marketable securities could also be used as currency for asset acquisitions or to secure new infusions of capital through periodic public offerings, while bolstering Mr. Icahn's own personal net worth and increase the asset portfolio of IEP.

63. Paying dividends was critical to the market's pricing of the IEP shares. Mr. Icahn's vast control of the company, even from the time of the IPO, put downward pressure on the price of the units since he was not about to trade a significant amount of his own unitholdings on the open market as he was intent upon not losing any significant percentage of control. The trading of IEP units day-to-day was effectively confined to a publicly tradable population of approximately 15% of its publicly tradeable units during the Class Period.

64. In order to maximize the opportunities to sell the units on the open market that were not owned by Mr. Icahn, it was critically important for IEP to lure investors with the prospect of healthy and continuing dividends. Dividends paid by IEP quarter after quarter, year after year, promoted the sale of IEP units to new investors who sought an investment that paid them dividends – so-called "dividend stocks" – while offering the promise of keeping pace with inflation, or even exceeding the pace of inflation through increased price performance arising from increased asset valuation and performance achieved by Mr. Icahn's famed investment strategies. In and of itself, paying healthy dividends could promote market demand, while Mr. Icahn's "magic touch" as an investor held the promise of improved asset value ("NAVs") of acquired businesses and companies. As Mr. Icahn intended all along, IEP was the proverbial "dividend stock" investment. Not surprisingly, many of the investors in IEP have been retirees who rely on those dividends

to supplement their income streams.

65. Defendants' assurances of ample liquidity and focus on dividends worked, swaying both investors and analysts. By November 9, 2021, Jefferies was presenting a "long view" analysis of IEP indicating a "[c]onstant dividend of $8.00/sh into perpetuity." Jefferies maintained this analysis throughout the Class Period, reiterating it as late as February 28, 2023.

66. As the Defendants' prior statements had conveyed, and the market was led to believe, IEP's significant dividends were consistent in perpetuity. The Jefferies analyst's statement itself, at a minimum, illustrates that the market was deceived by Defendants regarding IEP's dividend strength practice, and foundation.

67. On March 1, 2018, the Company filed a Form 10-K with the SEC for the fiscal year ending December 31, 2017 (the "2017 Form 10-K"). Included in the 2018 Form 10-K was a disclosure, repeated almost verbatim in each subsequent Form 10-K filed by IEP during the Class Period, regarding the Company's liquidity and factors relevant to its distributions:

> The declaration and payment of distributions is reviewed quarterly by Icahn Enterprises GP's board of directors based upon a review of our balance sheet and cash flow, the ratio of current assets to current liabilities, our expected capital and liquidity requirements, the provisions of our partnership agreement and provisions in our financing arrangements governing distributions, including the indentures governing the senior notes, and keeping in mind that limited partners subject to U.S. federal income tax have recognized income on our earnings even if they do not receive distributions that could be used to satisfy any resulting tax obligations. The payment of future distributions will be determined by the board of directors quarterly, based upon the factors described above and other factors that it deems relevant at the time that declaration of a distribution is considered. Payments of distributions are subject to certain restrictions, including certain restrictions on our subsidiaries which limit their ability to distribute dividends to us. There can be no assurance as to whether or in what amounts any future distributions might be paid.

As more fully discussed below, this boilerplate disclosure regarding dividend "risk" was patently inadequate and itself was deceptive and misleading by virtue of, among other things, falling to disclose the relationship of such quarterly and annual distributions to Mr. Icahn's massive margin loan debt (the extent of which was concealed until July 10, 2023).

➢ **Mr. Icahn Uses IEP Units as Collateral for Massive Personal Debt**

68. Reaping one of the benefits of going public with IEP, Mr. Icahn secured massive margin loans from lenders using his IEP shares as collateral. During the Class Period, he had personal debt of approximately $3.7 billion. Since his IEP units were pledged as collateral, lenders imposed debt covenants requiring Mr. Icahn to meet a minimum level of LTV ratios, failing which he would be vulnerable to margin calls requiring him to make good on the margin debt through massive repayments. While the terms and amount of such loan were concealed, owing to an ongoing lack of transparency, Mr. Icahn had been exposed personally in the event of a material decline in the trading price of IEP units causing him to violate loan-to-value ratio conditions or covenants, which, until July 10, 2023, were based on IEP's stock trading price. The margin loans Mr. Icahn personally secured using his IEP holdings as collateral enabled him to use such acquired funds for his own personal benefit, separate and apart from benefiting the Company he controlled – IEP – or the investors who bought its shares.

Materially False and Misleading Statements Issued During the Class Period

Statements Regarding 2018 Financial Results

69. The Class Period begins on August 2, 2018. As announced on August 2, 2018, on July 31, 2018, the IEP Board, controlled by Mr. Icahn, declared a quarterly dividend of $1.75 per depositary unit to IEP's unitholders. While IEP's filing with the SEC discussed the topic of dividend risk, Defendants did not fully or adequately disclose the risk associated with Icahn's loan covenants. They did not disclose that the dividend increase was arbitrarily determined, or was designed to support market demand for IEP units, or was declared to buoy or enhance the trading price of IEP units in order to guard

against a massive margin call with respect to Mr. Icahn's personal indebtedness that would arise from violating debt covenants regarding loan to value ratios based on the trading price of IEP units.

70. On August 2, 2018, the Company issued a press release entitled "Icahn Enterprises L.P. Reports Second Quarter 2018 Financial Results." Therein, the Company stated, in relevant part:

> Icahn Enterprises L.P. (NASDAQ: IEP) is reporting second quarter 2018 revenues of $3.6 billion and net income attributable to Icahn Enterprises of $309 million, or $1.70 per depositary unit, including $164 million from continuing operations, or $0.90 per depositary unit.
>
> ***
>
> For the three months ended June 30, 2018, Adjusted EBITDA attributable to Icahn Enterprises was $356 million compared to $288 million for the three months ended June 30, 2017. For the three months ended June 30, 2018, Adjusted EBIT attributable to Icahn Enterprises was $270 million compared to $195 million for the three months ended June 30, 2017.

71. During Icahn Enterprises' second quarter 2018 earnings conference call, held on August 2, 2018, CEO Cozza and CFO Cho presented Icahn's financial results for the quarter. Cozza repeated the financial results set for the in the Second Quarter 2018 Press Release and further discussed the results of IEP's automotive and energy segments, stating that "[n]et sales and service revenues for our automotive segment in Q2 2018 which now excludes the operating results of Federal-Mogul were $737 million compared to $694 million in the prior-year period." Cozza attributed this growth to "acquisitions at Icahn Automotive Group as well as strong organic sales growth in the commercial and service businesses." As to the energy segment, Cozza noted that second quarter net sales were "$1.9 billion and consolidated adjusted EBITDA was $175 million."

72. Defendant Cozza turned the call over to Defendant Cho who began by "briefly reviewing our consolidated results and then highlight the performance of our operating segments and comment on the strength of our balance sheet."

73. With regard to the automotive segment, Defendant Cho noted changes in accounting arising from the implementation of "new revenue recognition rules which account for drop-ship sales on a net basis." Cho asserted that with these changes, second quarter 2018 "net sales and service revenues were $737 million, up 6% from the prior-year period" and that the "accounting change accounted for $18 million of sales decline in the commercial business from 2Q '17 to 2Q '18." Adjusted EBITDA attributable to IEP for the automotive segment was $10 million in Q2 2018 compared to $28 million in the prior-year period.

74. During the Second Quarter 2018 Conference Call, Defendant Cho assured investors and the public that "[w]e maintain ample liquidity at the holding company and at each of our operating subs to take advantage of attractive opportunities. We ended Q2 2018 with cash, cash equivalents, our investment in the funds and revolver availability totaling approximately $5 billion." Cho further asserted that "holdco cash will be replenished with the close of Federal-Mogul and Tropicana transactions" while IEP's subsidiaries had "approximately $800 million of cash and $770 million of undrawn credit facilities to enable them to take advantage of attractive opportunities." Cho concluded his presentation by assuring investors and the public that the Company would "continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside of our existing operating segments."

75. On August 2, 2018, IEP filed its Report on Form 10-Q with the SEC, executed by Defendant Cho and IEP chief accounting officer, Peter Reck, setting forth its financial results for the quarter ending June 30, 2018, which it represented were stated in accordance with GAAP.

76. On November 8, 2018, the Company issued a press release entitled "Icahn Enterprises L.P. Reports Third Quarter 2018 Financial Results" (the "Third Quarter 2018 Press Release"). The Company also filed this press release with the SEC as an exhibit to a Form 8-K on that same day. Therein, the Company, in relevant part, stated:

> - **For the trailing twelve months ended September 30, 2018 indicative net asset value increased by $1.57 billion to $8.64 billion compared to $7.08 billion as of September 30, 2017**
>
> NEW YORK, Nov. 08, 2018 (GLOBE NEWSWIRE) -- Icahn Enterprises L.P. (NASDAQ: IEP) is reporting third quarter 2018 revenues of $2.7 billion and net income attributable to Icahn Enterprises of $126 million, or $0.68 per depositary unit, including a loss of $29 million from continuing operations, or $0.16 per depositary unit. For the three months ended September 30, 2017 revenues were $3.5 billion and net income attributable to Icahn Enterprises was $597 million, or $3.53 per depositary unit, including $577 million from continuing operations, or $3.41 per depositary unit. For the three months ended September 30, 2018, Adjusted EBITDA attributable to Icahn Enterprises was $26 million compared to $345 million for the three months ended September 30, 2017.

77. The Third Quarter 2018 Press Release also included the Company's calculation of its Indicative Net Asset Value, reflecting that NAV of $8.644 billion, $1.89 billion of which was attributed to the Automotive segment.

78. During a November 8, 2018 conference call following issuance of the Company's third quarter 2018 financial results (the "Third Quarter 2018 Conference Call"), CEO Cozza and CFO Cho presented Icahn's financial results for the quarter. Cozza stated, *inter alia,* that:

> [F]or Q3 2018, we had net income attributable to Icahn Enterprises of $126 million or $0.68 per LP unit compared to net income of $597 million or $3.53 per LP unit in the prior year period.

79. Cozza further noted "[a]djusted EBITDA attributable to Icahn Enterprises for Q3 2018 was $26 million compared to $345 million for Q3 of 2017." Cozza also highlighted the performance of the Automotive segment:

> Net sales and service revenues for our Automotive segment in Q3 2018, which excludes the operating results of Federal-Mogul, were $735 million compared to $700 million in the prior year period. The increase was primarily due to acquisitions at Icahn Automotive Group as well as organic sales growth in the commercial and service businesses.

80. Following Defendant Cozza, Defendant Cho spoke to the Company's financial results and "highlight[ed] the performance of our operating segments and comment on the strength of our balance sheet," noting that: "[i]n Q3 2018, net income attributable to Icahn Enterprises was $126 million compared to net income of $597 million in the prior year period."

81. As to the Automotive segment, Cho noted that:

> Q3 2018 net sales and service revenue for Icahn Automotive Group were $735 million, up 5% from the prior year period. The increase was due to $18 million of organic revenue growth and $29 million of growth from acquisitions, offset in part by $12 million due to the effect of adoption of new revenue recognition standards.

82. Cho attributed declining EDITDA in the segment to "expenses related to the transformation and additional costs of the commercial business."

83. Cho concluded with a discussion of liquidity and net asset value:

> We maintain ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities. We ended Q3 '18 with cash, cash equivalents, our investment in the funds and revolver availability totaling approximately $4.9 billion. Our subsidiaries have approximately $1.0 billion of cash and $810 million of undrawn credit facilities to enable them to take advantage of attractive opportunities.
>
> ***
>
> The ***indicative net asset value has increased by over $1.5 billion or 22% in the last 12 months***.
>
> ***
>
> In summary, ***we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside of our operating segments***.

(Emphasis added).

84. On November 8, 2018, the Company filed a Form 10-Q, signed by Defendant Cho, reporting quarterly financial results for the period ending September 30,

2018, with the SEC and representing that they were stated in accordance with GAAP.

85. Defendants' assurances of ample liquidity and focus on dividends worked, swaying both investors and analysts. No later than November 9, 2021, Jefferies was presenting a "long view" analysis of IEP indicating a "[c]onstant dividend of $8.00/sh into perpetuity." Jefferies maintained this analysis throughout the class period, reiterating it as late as February 28, 2023.

86. On February 28, 2019, as a further part and parcel of deceptive scheme to induce investor confidence and enthusiasm, thereby buoying and inflating the trading price of IEP units, IEP assured investors regarding the strength and ongoing continuity of the Icahn controlled board of directors' dividend distribution, highlighting in IEP's filing with the SEC on Form 8-K, signed by IEP Chief Accounting Officer Peter Neck, the exclamation that ***"Icahn Enterprises has a long history of endeavoring to return capital to its unitholders by declaring and paying significant and consistent annual distributions."*** (Emphasis added). The words "significant and consistent annual distributions" were purposeful and greatly advanced the fraudulent scheme deployed by Icahn and his subordinates – Individual Defendants herein. The favorable dividend picture Defendants painted was drilled into the investment community. In that regard, investors were informed about ongoing and increasing historic annual dividend distributions "[a]s a reminder," since 2014, from $6.00 in 2014, 2015, and 2016, and 2017, each year, to $7.00 in 2018 and an estimated $8.00 per depositary unit for fiscal year 2019. The dividend increase in 2019 was decided by "the Board of Directors of the general partner of Icahn Enterprises" – in essence, Carl Icahn, Chairman of the Board that he controlled –declaring a "quarterly distribution in the amount of $2.00 per depositary unit ($8.00 per unit annualized)…."

87. The Fourth Quarter 2018 Press Release included a substantial discussion of the Company's history of distributions:

> **Distribution**
>
> Icahn Enterprises has a long history of endeavoring to return capital to its unitholders by declaring and paying significant and consistent annual distributions. As a reminder –
>
> Icahn Enterprises estimated annual distribution of $8.00 per depositary unit for fiscal year 2019
>
> Icahn Enterprises declared annual distributions of $7.00 per depositary unit for fiscal year 2018
>
> Icahn Enterprises declared annual distributions of $6.00 per depositary unit for fiscal year 2017
>
> Icahn Enterprises declared annual distributions of $6.00 per depositary unit for fiscal year 2016
>
> Icahn Enterprises declared annual distributions of $6.00 per depositary unit for fiscal year 2015
>
> Icahn Enterprises declared annual distributions of $6.00 per depositary unit for fiscal year 2014
>
> Most recently, on February 26, 2019, the Board of Directors of the general partner of Icahn Enterprises declared a quarterly distribution in the amount of $2.00 per depositary unit ($8.00 per unit annualized)….

88. On February 28, 2019, Defendants Cozza and Cho held a conference call to discuss fourth quarter and fiscal year 2018 financial results.

89. During the February 28, 2019 conference call, Defendant Cozza stated that:

> Net income attributable to Icahn Enterprises for 2018 was $1.5 billion or $11.46 per LP unit compared to net income of $2.4 billion or $14.80 per LP unit in 2017. For Q4 of 2018, net income attributable to Icahn Enterprises was $935 million as compared to net income of $298 million in the prior year period. Adjusted EBITDA attributable to Icahn Enterprises for 2018 was $561 million compared to $642 million in 2017.
>
> ***
>
> Our Automotive segment is in the process of implementing a multiyear transformational plan, which includes the integration and restructuring of the operations of Pep Boys and Auto Plus. The focus will be on improving market positioning, optimizing distribution and inventory management as well as

> numerous business process improvement initiatives.
>
> ***
>
> The strong earnings and robust liquidity on our balance sheet led to our Board of Directors increasing the quarterly cash dividend from $1.75 per unit to $2 per unit, or $7 per unit to $8 per unit on an annualized basis.

90. Thereafter, Defendant Cho further discussed the Company's results and commented on "***the strength of our balance sheet***" (emphasis added) stating:

> For Q4 2018, net income attributable to Icahn Enterprises was $935 million as compared to net income of $298 million in the prior year period. Net loss attributable to Icahn Enterprises from continuing ops for Q4 '18 was $434 million compared to net income of $279 million in the prior year period. Full year net income attributable to Icahn Enterprises for 2018 was $1.5 billion compared to a net income of $2.4 billion in 2017. Net loss attributable to Icahn Enterprises from continuing ops for '18 was $213 million compared to net income of $2.3 billion in the prior year period. The prior year period includes $1 billion of gain, net of tax, from the sale of ARL in June of 2017.
>
> ***
>
> As Keith mentioned earlier, our Automotive segment is in the process of implementing a multiyear transformation plan, which includes the integration and restructuring of operations of Pep Boys, IEH Auto and the franchise businesses of Precision Tune and American Driveline. The focus will be on strengthening in our service footprint by building density in high growth markets and growing our business with fleet and national accounts. For the parts business, we need to focus on corn [sic] markets ***where we can grow rapidly by selling parts to commercial customers and leverage efficiencies in our supply chain***.
>
> ***
>
> In Q4 2018, we conducted our annual goodwill assessment and impaired all of the goodwill related to the parts business. This resulted in a charge of $87 million.
>
> ***
>
> We maintained ample liquidity at the holding company and at each of the operating subsidiaries to take advantage of attractive opportunities. We ended Q4 '18 with cash, cash equivalents, our investment in the funds and revolver availability totaling approximately $8.3 billion. Our subsidiaries have approximately $800 million of cash and $600 million of undrawn credit facilities to enable them to take advantage of attractive opportunities.
>
> In summary, we continue to focus on building asset value and maintaining

> ample liquidity to enable us to capitalize on opportunities within and outside our existing operating segments.

(Emphasis added).

91. The Company issued a presentation, used by Defendant Cho during the Second Quarter 2018 Conference Call, that summarized IEP's financials and included summaries of the performance of each of the Company's operating segments.

92. The disclosures made by IEP and the Individual Defendants during the fiscal year ending December 31, 2018**,** were untrue because they:

a. Concealed from the market Defendants' ***dividend inducement scheme*** by which IEP and the Individual Defendants used heightened dividend yields as an inducement to buoy or inflate the trading price of IEP units and insulate Mr. Icahn from a massive margin call on his personal margin loan, as more fully discussed below, as deceived investors clamored to invest in a so-called "dividend stock," ostensibly offering increased asset values;

b. Concealed from the market that the loan-to-value ratios in Mr. Icahn's debt covenants tethered to IEP's unit trading price created a significant and ***material undisclosed risk of a margin call*** on Mr. Icahn's personal loans;

c. ***Reported indicative net asset values were substantially inflated***, due to a combination of overly aggressive marks on IEP's investments and continued year to date underperformance in operating assets. Unlike GAAP NAV, "indicative" NAV depends upon the chosen valuation methodology one applies, as well as the assumptions regarding the inputs to the valuation calculations. IEP's indicative NAV, at all times, well exceeded its GAAP NAV, as shown in the table below at ¶ 308;

d. Concealed and failed to disclose that de-linking Mr. Icahn's loan covenant LTV ratios from IEP's unit trading price would ***adversely impact the Company's distribution of dividends***; and

e. *See also,* the subpart below entitled "Additional Bases for Falsity of Defendants' Statements."

Statements Regarding 2019 Financial Results

93. On May 2, 2019, IEP issued a press release titled "Icahn Enterprises L.P. Reports First Quarter 2019 financial results" (the "First Quarter 2019 Press Release"). The First Quarter 2019 Press Release stated, in part, that the Company's first quarter 2019 revenues were $1.9 billion with a net loss attributable to Icahn Enterprises of $394 million, or a loss of $2.02 per depositary unit. For the three months ended March 31, 2018, revenues were $3.0 billion and net income attributable to Icahn Enterprises was $132 million, or $0.74 per depositary unit including $98 million from continuing operations or $0.55 per depositary unit. For the three months ended March 31, 2019, Adjusted EBITDA attributable to Icahn Enterprises was $(194) million compared to $325 million for the three months ended March 31, 2018. For the three months ended March 31, 2019, Adjusted EBIT attributable to Icahn Enterprises was $(281) million compared to $238 million for the three months ended March 31, 2018.

94. In the same press release, the Company reported that "for the three months ended March 31, 2019, indicative net asset value increased to $8.91 billion compared to $8.15 billion as of December 31, 2018."

95. It was also noted in the First Quarter 2019 Press Release that on "April 30, 2019, the Board of Directors of the general partner of Icahn Enterprises declared a quarterly distribution in the amount of $2 per depositary unit, which will be paid on or about June 20, 2019…."

96. It was further announced that Icahn Enterprises was intent on entering into an "Open Market Sales Agreement" with Jefferies, LLC, pursuant to which the Company "may sell its depositary units, from time to time, for up to $400 million in aggregate sales proceeds" on the NASDAQ Global Select market and "at such prices at times as the Company may agree with Jefferies," and further disclosing that the proceeds from the

transactions will be issued to fund potential acquisitions as well as for general limited partnership purposes, while believing that it will "strengthen the Company's credit profile, expand the Company's unitholder base and improve daily trading liquidity." In its first quarter 2019 press release announcing its financial results for the first quarter 2019, the Company stated total assets for the quarter ending March 31, 2019 valued at $23,824,000 compared to total assets for the period ending December 31, 2018 at $23,489,000.

97. The First Quarter 2019 Press Release cautioned that EBITDA, Adjusted EBITDA, EBIT and adjusted EBIT "are not measurements of our financial performance under U.S. GAAP and should not be considered as alternatives to net income or any other performance measures derived in accordance with U.S. GAAP, or as alternatives to cash flow from operating activities as a measure of our liquidity. Given these limitations, we rely primarily on our U.S. GAAP results and use EBITDA, Adjusted EBITDA, EBIT and Adjusted EBIT only as a supplemental measure of our financial performance." The Q1'19 Press Release further noted that:

> ***The Company uses indicative net asset value as an additional method for considering the value of the Company's assets, and we believe that the information can be helpful to investors***. Please note, however, that the indicative net asset value does not represent the market price at which the units trade. Accordingly, data regarding indicative net asset value is of limited use and should not be considered in isolation.

(Emphasis added).

98. Then, the First Quarter 2019 Press Release noted the following with respect to "indicative net asset value" of the Company's market-value subsidiaries and other subsidiaries, noting that NAV of $8.189 billion, including $1.832 billion attributed to the Icahn Automotive Group.

99. During the follow-on Q1 2019 Icahn Enterprises Earnings Call ("Q1'10 Earnings Conference Call"), Cozza reported financial results for Q1'19 ending March 31, 2019, including, among other things, that IEP had a net loss of $394 million or a loss of

$2.02 per unit compared to net income of $132 million or $0.74 per unit in Q'18. Cozza noted Adjusted EBITDA for Q'19 resulting in a loss of $194 million compared to a gain of $325 million in Q1'18. Regarding the Automotive segment, Cozza noted Q1'18 revenues of $693 million versus $686 million in Q'19, stating that the "increase was primarily due to higher automotive service revenues offset in part by a decrease in aftermarket part sales," while reminding call participants that Icahn Automotive Group "is in the process of implementing a multiyear transformational plan to restructure the operations and improve profitability."

100. During the call, Cozza reiterated IEP's intention to enter into an open-market sales agreement by which IEP may sell depositary units "from time to time" up to $400 million in aggregate sales proceeds. The sale would, among other things, "expand" IEP's unitholder base and "improve daily trading liquidity."

101. CFO Cho reported, among other things, that net sales for the Automotive Group in the first quarter of 2019 were up 1% from the same quarter of the prior year – which was attributable to higher automotive service revenue while "[o]verall, part sales were flat." Cho reported Adjusted EBITDA for IEP's Automotive segment for the first quarter resulting in a loss of $22 million compared to a $10 million loss in the same quarter of the prior year. Cho noted that "[p]rofitability was lower due to expenses related to the transformation of the business and additional costs related to the investment in the commercial business." Cho ended the presentation stating "[i]n summary, we continue to focus on building asset value and maintain ample liquidity to enable us to capitalize on opportunities within and outside our existing operating segments."

102. During the First Quarter 2019 Conference Call, MidOcean Partners L.P. analyst Robert Sullivan engaged in the following discussion about the open market sale of stock announced by IEP:

ROBERT SULLIVAN, ANALYST, MIDOCEAN PARTNERS LP:

> (technical difficulty) open market sales of stock, in terms of how you're thinking about that, is it to improve the liquidity of the stock? Is it to give yourself more flexibility on the investment side for control and noncontrol investments? Is it to delever? You guys are obviously sitting on a lot of cash right now, so I was a little curious in terms of what your intention was there.
>
> KEITH COZZA: Yes, sure. I think a number of the reasons you stated are valid. So from building an even bigger war chest, we obviously endeavor to have as much firepower as possible and could be used for potential acquisitions, new investments. But broadly speaking, there can be -- there's no assurances that we'll actually sell all of that stock or we're going to be very judicious about it. But we also think, hey, it further improves the credit profile, and we're certainly looking to expand our investor base as well as improve the daily liquidity of the underlying trading volumes. So we think it ultimately can lead to positives to all of that.
>
> ROBERT SULLIVAN: Got you. And why wouldn't you just engage in kind of a normal stock sale process in terms of how you've done in the past in terms of offering in a more traditional offering?
>
> KEITH COZZA: Well, I think we evaluate all the methodologies to effectively raise capital, and we think this as a better path to give us more optionality. We don't think -- we don't want to – in a traditional offering, I think you'll have to sell the stock at some discount, and we like the flexibility of this and we don't think the stock should be sold at a discount.
>
> The stock is paying an $8-a-year dividend. It trades under 80. So obviously, by definition, mathematically, that's greater than a 10% yield. And if it trades lower, we like having the optionality of not selling stock. And if it trades at what we think is a fair entry point or a fair level to raise capital, we may sell some stock.
>
> But doing it the traditional way generally historically required a large discount. We were willing to do that in years past in order to get some float out there and try to improve the liquidity, but this, we think, is a better option for all unitholders.

103. The First Quarter 2019 conference call presentation, issued for use during the conference call, noted IEP's "net loss" of "$394 million, or a loss of $2.02 per depositary unit" the Board's declaration of a "$2.00 quarterly distribution" were conspicuously stated as stand-alone items on the first slide presented entitled "Q1 2019

Highlights and Recent Developments." With regard to the Automotive segment, the presentation further stated:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary Icahn Automotive Group LLC ("Icahn Automotive").
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers.

Summary Segment Financial Results

Automotive Segment	Three Months Ended December 31,		Year Ended December 31,	
($ millions)	2018	2017	2018	2017
Select Income Statement Data:				
Net sales and other revenues from operations	$ 700	$ 692	$ 2,858	$ 2,723
Adjusted EBITDA	(56)	(45)	(48)	3
Net loss	(165)	(15)	(230)	(51)
Adjusted EBITDA attributable to IEP	$ (56)	$ (45)	$ (48)	$ 3
Net loss attributable to IEP	(165)	(15)	(230)	(51)
Capital Expenditures	$ 29	$ 51	$ 66	$ 86

Highlights and Recent Developments

- Icahn Automotive is in the process of implementing a multi-year transformation plan. Key priorities include:
  - Positioning the service business to take advantage of opportunities in the do-it-for-me market and vehicle fleets
  - Optimizing the value of the commercial parts distribution business in high volume markets
  - Improving inventory management across parts and tire distribution network
  - Business process improvements, including investments in our supply chain and information technology capabilities
- Q4 2018 same store sales up 2% compared to Q4 2017
  - Service up 3%
  - Parts up 1%
- During Q4 2018 there was impairment of goodwill of $87 million
- Q4 2018 Adjusted EBITDA was a loss of $56 million compared to a loss of $45 million in Q4 2017
  - Elevated expense related to transformation plan and investments in commercial parts business

8

104. Another slide reported "Total Liquidity" of $8.136 billion. The First Quarter 2019 Earnings Presentations slide represented "[s]ignificant Valuation demonstrated by market value of IEP's public subsidiaries and Holding Company interest in funds and book value or market comparables of other assets," stating a value of $1.832 billion for the Icahn Automotive Group for the first quarter versus $1.747 billion as of December 31, 2018.

105. Speaking again to the important point to investors of asset values, another slide assured investors that the "Company and its subsidiaries maintain ample liquidity to take advantage of [its] attractive opportunities for their respective businesses." Yet another slide entitled "IEP Summary Financial Information" assured that there was "significant valuation demonstrated by market value of IEP's public subsidiaries and Holding Company interest in Funds and book value or market comparables of other assets," stating a total

"Indicative Net Asset Value" of $8.189 billion for the first quarter of 2019, which includes a NAV for the Automotive Group of $1,832 billion.

106. On August 6, 2019, IEP issued a press release entitled "Icahn Enterprises L.P. Reports Second Quarter 2019 Financial Results" ("Second Quarter 2019 Press Release"), highlighting a "[s]econd quarter net loss attributable to Icahn Enterprises of $498 million, or a loss of $2.49 per depositary unit," and that the "Board approves quarterly distribution of $2.00 per depositary unit." The Q2'19 Press Release went on to report that quarterly revenues were $2.2 billion and net income attributable to the Icahn Enterprises was $302 million, or $1.66 per depositary unit. For the six months ended June 30, 2018, it was represented that "indicative net asset value" rose to $8.26 billion compared to $8.15 billion as of December 31, 2018.

107. The Second Quarter 2019 Press Release further highlighted the "[u]se of Indicative net Asset Value Data," representing that the "Company uses indicative net asset value as an additional method for considering the value of the Company's assets," while representing that "we believe that this information can be helpful to investors," adding that "the indicative net asset value does not represent the market price at which the units trade" and "[a]ccordingly, data regarding indicative net asset value is of limited use and should not be considered in isolation," adding that since the depositary units "are not redeemable," the "investors have no right or ability to obtain from the Company the indicative net asset value of units that they own …Units may be bought and sold on the NASDAQ Global Select Market at prevailing market prices….[that] may be higher or lower than the indicative net asset value of the units as calculated by management."

108. The Second Quarter 2019 Press Release stated an asset value of the Icahn Automotive Group of $1.844 billion as of June 30, 2019 versus $1.747 billion as of December 31, 2018.

109. On August 6, 2019, Defendants Cozza and Cho held a Conference Call with analysts James John and Robert Steele of Jeffreys LLC to discuss IEP's second quarter

2019 results and business status ("Second Quarter 2019 Earnings Conference Call"), Defendant Cozza began by providing brief highlights reporting for Q2 2019 "a net loss attributable to Icahn Enterprises of $498 million or $2.49 per LP unit compared to net income of $302 million or $1.66 per LP unit in the prior year period" adding that "the quarterly loss was primarily driven by a decline in market value of Tenneco common stock received in connection with the sale of Federal Mogul."

110. During the Second Quarter 2019 Earnings Conference Call, Cozza reported that "Net sales and service revenues for our Automotive segment in Q2 2019 were $744 million compared to the $737 million in the prior year period," adding that "The increase was primarily due to higher automotive service revenues, offset in part by a decrease in aftermarket part sales," emphasizing that Icahn Automotive Group "continues to push forward with the multiyear transformational plan to restructure the operations and improve profitability." Cozza informed investors that IEP issued $1.25 billion of new senior notes due 2026 during Q2'19 and subsequent to the quarter paid down $1.7 billion of IEP senior notes due in 2020 with cash on hand, while telling investors that IEP "closed the quarter with a strong balance sheet and continue to look for investment opportunities that align with our activist philosophy."

111. Defendant CFO Cho gave a similar report about the financial results and the Automotive segment, adding that "[t]he Auto segment is implementing a plan to separate the parts business from the service business …. and established a central shared service group to support both sides." CFO Cho completed his portion of the presentation by assuring that "we maintain ample liquidity at the holding Company and at each of the operating subsidiaries to take advantage of attractive opportunities," ending the second quarter of 2019 with approximately $9.2 billion in cash, cash equivalents, investment funds and revolver availability, and stating that "[i]n summary, we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside our existing operating segments."

112. During IEP's Second Quarter 2019 Earnings Conference Call defendant Cho relied on a presentation with the overview slide entitled "Q2 2019 Highlights and Recent Developments," which provided the highlighted features of the presentation of the second quarter 2019 results noting, in part:

- Net loss attributable to Icahn Enterprises for Q2 2019 was $498 million, or a loss of $2.49 per depositary unit
- Board declared $2.00 quarterly distribution payable in either cash or additional units
- In May 2019, IEP announced the commencement of its "at-the-market" offering pursuant to its Open Market Sale Agreement, pursuant to which Icahn Enterprises may sell its depositary units, from time to time, for up to $400 million in aggregate sale proceeds
- In May and June 2019, IEP issued $1.250 billion in aggregate principal amount of 6.250% senior unsecured notes due 2026.
    - On August 1, 2019, proceeds from the notes plus cash on hand were used to repay in full our 6.000% senior unsecured notes due 2020

113. The Second Quarter 2019 Earnings Conference Call slide presentation reported on IEP business segments, including "Energy," "Automotive," and "Real Estate," among others. Regarding its Automotive segment, a slide reported "Highlights and Recent Developments" including, *inter alia*, the following:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers

Summary Segment Financial Results

Automotive Segment ($ millions)	Three Months Ended June 30, 2019	Three Months Ended June 30, 2018	Six Months Ended June 30, 2019	Six Months Ended June 30, 2018
Select Income Statement Data:				
Net sales and other revenues from operations	$ 744	$ 737	$ 1,437	$ 1,423
Adjusted EBITDA	(4)	10	(26)	—
Net loss	(38)	(18)	(80)	(52)
Adjusted EBITDA attributable to IEP	$ (4)	$ 10	$ (26)	$ —
Net loss attributable to IEP	(38)	(18)	(80)	(52)
Capital Expenditures	$ 9	$ 18	$ 22	$ 37

Highlights and Recent Developments

- Icahn Automotive is implementing a multi-year plan to separate its aftermarket parts and automotive service businesses into two separate operating companies. The plan includes streamlining Icahn Automotive's corporate and field support teams; facility closures, consolidations and conversions; inventory optimization actions; and re-focusing its automotive parts business on certain core markets.
- Our Automotive segment's priorities include:
  - Positioning the service business to take advantage of opportunities in the do-it-for-me market and vehicle fleets;
  - Optimizing the value of the commercial parts distribution business in certain high-volume core markets;
  - Exiting the automotive parts distribution business in certain low volume, non-core markets;
  - Improving inventory management across Icahn Automotive's parts and tire distribution network;
  - Business process improvements, including investments in our supply chain and information technology capabilities.
- Q2 2019 Adjusted EBITDA was $(4) million compared to $10 million in Q2 2018
  - Elevated expense related to transformation plan and investments in commercial parts business

8

114. On November 5, 2019 IEP issued a press release entitled "Icahn Enterprises L.P. Reports Third Quarter 2019 Financial Results" ("Third Quarter 2019 Press Release"), which highlighted that IEP had a third quarter 2019 net loss of $49 million or a loss of $0.24 per depositary unit and exclaiming that the "Board approves quarterly distribution of $2.00 per depositary unit," compared to the third quarter of 2018 in which revenues were $2.6 billion and net income attributable to Icahn Enterprises was $118 million or $0.64 per depositary unit. For the three months ended September 30, 2019, Adjusted EBITDA attributable to Icahn Enterprises was ($121) million compared to $5 million in the third quarter of the prior year, with third quarter Adjusted EBIT of ($209) million compared to ($79) million in the third quarter of 2018. In the third quarter 2019 Press Release, the Company reported that in third quarter "indicative net asset value decreased to $7.48 billion compared to $8.15 billion as of December 31, 2018."

115. The Third Quarter 2019 Press Release presented IEP's "Condensed Consolidated Balance Sheet" (unaudited) reporting total assets of $23.257 billion at the end of Q3'19 versus $23.489 billion at the end of 2018, including goodwill, with a rise in

cash and cash equivalents to $3,266 billion ending Q3'19 versus $2.656 billion ending December 31, 2018.

116. The Third Quarter 2019 Press Release stated that:

> EBITDA, Adjusted EBITDA, EBIT and Adjusted EBIT are not measurements of our financial performance under U.S. GAAP and should not be considered as alternatives to net income or any other performance measures derived in accordance with U.S. GAAP or as alternatives to cash flow from operating activities as a measure of our liquidity. Given these limitations, we rely primarily on our U.S. GAAP results and use EBITDA, Adjusted EBITDA, EBIT and Adjusted EBIT only as a supplemental measure of our financial performance.

117. Under the bold subheading "Use of Indicative Net Asset Value Data" the Company reported that:

> ***The Company uses indicative net asset value as an additional method for considering the value of the Company's assets, and we believe that this information can be helpful to investors***. Please note, however, that the indicative net asset value does not represent the market price at which the units trade. Accordingly, data regarding indicative net asset value is of limited use and should not be considered in isolation.

(Emphasis added).

118. The Third Quarter 2019 Press Release reported "indicative net asset value" of $7.891 billion, of which $1.891 billion was attributed to Icahn Automotive Group.

119. On November 5, 2019, Cozza and Cho held an earnings conference call with Jefferies analysts James John and Robert Steele reporting on IEP's financial results and condition in the third quarter of 2019, ending September 30, 2019 ("Third Quarter 2019 Conference Call"). Defendant Cozza began the call by providing some "brief highlights," reporting a net loss attributable to Icahn Enterprises of $49 million or $0.24 per unit compared to net income of $118 million or $0.64 per unit for the third quarter of 2019.

After repeating the results respecting Adjusted EBITDA and discussing the Investment Funds' negative return of 7.4% in the third quarter versus 6.3% for the third quarter of 2018, and a strong quarter in its CVR Energy segment, which announced a $300 million stock repurchase program respecting CVR's shares, Cozza stated that "[n]et sales and service revenues for our Automotive segment in Q3 were $744 million compared to $735 million in the prior year period. The increase was primarily due to higher automotive service revenues, offset in part by a decrease in aftermarket parts sales." Icahn Automotive Group continued to push forward with the multiyear transformational plan to "restructure the operations and improve profitability." Cozza also noted that IEP issued $500 million of new notes due in 2024 at a coupon of 4.75% and paid down $1.7 billion of IEP senior notes due 2020 in Q3 with cash on hand, resulting in total debt at the holding company of $5.6 billion.

120. CFO Cho also summarized various consolidated financial results. With regard to the important Automotive segment, Defendant Cho reported that "Q3 2019 net sales and service revenue for Icahn Automotive Group were $744 million, up 1% from the prior year period" and that the "increase was attributable to higher automotive service revenues, partially offset by a decrease in aftermarket parts sales." Cho reported that "Adjusted EBITDA attributable to IEP for the Automotive segment was a loss of $23 million in Q3 2019 compared to a gain of $8 million in the prior year period" while adding that "[p]rofitability was impacted by margin rate contraction for services and parts businesses due to the reduction in vendor support funds and other unfavorable margin adjustments," he continued: "[a]s previously disclosed, Icahn Automotive is implementing a plan to separate its aftermarkets parts business from the service business. We have started to execute on a multiyear transformation plan to improve profitability in our parts business and continue to invest in our growing service business."

121. Turning to liquidity, CFO Cho represented that IEP had "maintained ample liquidity at the holding company and at each of our operating subs to take advantage of

attractive opportunities," ending Q3'19 with approximately $8.2 million in cash, cash equivalents, investment "in Investment Funds and revolver availability" and that its subsidiaries "have approximately $800 million of cash and $600 million of undrawn credit facilities to enable them to take advantage of attractive opportunities."

122. During the Third Quarter 2019 Earnings Conference Call, a slide presentation reporting "Q3 2019 Highlights and recent Developments" repeated the net loss for Q3 2019 of "$49 million, or a loss of $0.24 per depositary unit" and, as a second bullet point, noted that the "Board declared [a] $2.00 quarterly distribution" – which was per depositary unit, payable in cash or additional units. Noting that IEP conducts its Automotive segment through its wholly owned subsidiary Icahn-Automotive Group, LLC, ("Icahn Automotive"), a slide dedicated to the segment stated:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers

Summary Segment Financial Results

Automotive Segment	Three Months Ended September 30,		Nine Months Ended September 30,	
($Millions)	2019	2018	2019	2018
Select Income Statement Data:				
Net sales and other revenues from operations	$744	$735	$2,181	$2,158
Adjusted EBITDA	(23)	8	(49)	8
Net income (loss)	(48)	(13)	(128)	(65)
Adjusted EBITDA attributable to IEP	($23)	$8	($49)	$8
Net income (loss) attributable to IEP	(48)	(13)	(128)	(65)
Capital Expenditures	$20	$16	$42	$53

Highlights and Recent Developments

- Icahn Automotive is implementing a multi-year plan to separate its aftermarket parts and automotive service businesses into two separate operating companies. The plan includes streamlining Icahn Automotive's corporate and field support teams; facility closures, consolidations and conversions; inventory optimization actions; and re-focusing its automotive parts business on certain core markets.
- Our Automotive segment's priorities include:
  - Positioning the service business to take advantage of opportunities in the do-it-for-me market and vehicle fleets;
  - Optimizing the value of the commercial parts distribution business in certain high-volume core markets;
  - Exiting the automotive parts distribution business in certain low volume, non-core markets;
  - Improving inventory management across Icahn Automotive's parts and tire distribution network;
  - Business process improvements, including investments in our supply chain and information technology capabilities.
- Q3 2019 Adjusted EBITDA was $(23) million compared to $8 million in Q3 2018
  - Elevated expense related to transformation plan and investments in commercial parts business

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123. The Third Quarter 2019 Earnings Conference Call slide presentation reported that the Holding Company and IEP's operating subsidiaries "maintain ample liquidity to take advantage of attractive opportunities for their respective businesses," while

stating liquid assets of $7.539 billion and "Subsidiary Revolver Availability," $611 million, for a total of $8.150 billion, including $107 million Revolver available for Automotive.

124. Another slide captioned "IEP Summary Financial Information" represented that there was "[s]ignificant valuation demonstrated by market value of IEP public subsidiaries and Holding Company interest in Funds and book value or market comparables of other assets," including valuation for Icahn Automotive Group of $1.842 billion for the third quarter versus $1.747 billion for the year ending December 31, 2018, while stating "Indicative Net Asset Value" of $7,491 billion in Q3'19 versus $8,152 billion as of December 31, 2018.

125. A press release on February 28, 2020, ("Fourth Quarter and Fiscal Year 2019 Press Release") wherein the Partnership reported, among other things, that for the year ended December 31, 2019, "revenues were $9.0 billion and net loss attributable to Icahn Enterprises was $1.1 billion, or $5.38 per depositary unit[.]" In addition, it was reported that for the year ended December 31, 2019, "indicative net asset value decreased to $7.07 billion compared to $8.15 billion as of December 31, 2018." The Fourth Quarter and Fiscal Year 2019 Press Release also noted the declaration of a quarterly distribution of $2.00 per depositary unit.

126. On February 28, 2020, Cozza and CFO Cho held a conference call with analysts, including Daniel Thomas Fannon of Jefferies, reporting on IEP's financial results for the fourth quarter of 2019 and fiscal year ended 2019 and business condition. President, CEO and Director Cozza stated that IEP had a fourth quarter 2019 net loss of $157 million compared to net income of $930 million for the fourth quarter of 2018, "primarily driven by holding company interest expense and losses at our Automotive segment." It was further reported that Icahn Enterprises had a net loss for 2019 of $1.1 billion or $5.38 per unit compared to net income of $1.5 billion or $11.33 per unit in 2018. The "losses in the investment in the Automotive segment" was a driver of the full year loss, despite being

"offset by strong results in our Energy segment." Cozza further stated that Adjusted EBITDA for 2019 was a "loss of $462 million compared to a gain of $557 million in 2018."

127. Cozza noted that IEP issued $75 million of new senior notes due 2027 with a coupon of 5.25% and that subsequent to year-end 2019 IEP "issued $850 million of add-on to our 2024 and 2027 senior notes" while putting down "approximately $1.35 billion of our IEP senior notes due in 2022," and that "total debt outstanding at the holding company currently stands at $5.8 billion."

128. Cozza then turned the call over to Defendant Cho, who summarized the results and provided segment by segment detail.

> Now turning to the Automotive segment. Q4 2019 net sales and service revenues for Icahn Automotive Group were $703 million, up slightly from the prior year period. The increase was attributable to higher automotive service revenues, partially offset by a decrease in aftermarket part sales. Higher service revenues were due to growing do-it-for-me and Fleet businesses. Q4 2019 adjusted EBITDA was a loss of $31 million compared to a loss of $56 million for the prior year period. Full year 2019 net sales and service revenues were $2.9 billion, up 1% from the prior year period. Adjusted EBITDA for the Automotive segment was a loss of $80 million in 2019 compared to a loss of $48 million for the prior year period. Profitability was impacted by margin rate contraction for Service and Parts business due to the reduction in vendor support funds and other unfavorable margin adjustments. As previously disclosed, Icahn Automotive is implementing a plan to separate its aftermarket parts business from the service business. We have accelerated restructuring the store and D.C. footprints of our parts business and continue to invest in our growing service business.

129. Defendant Cho assured the analysts that "[w]e maintain ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities," thereafter concluding "[i]n summary, we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside our existing operating segments."

130. During the Fourth Quarter 2019 Earnings Conference Call, Defendant

Cozza and portfolio manager Nathaniel Hall August had the following exchange:

> **August**: Okay. Okay. Great. And then just turning to the Auto division. It seems like the strategy there has changed a little bit from when you originally acquired Pep Boys and decided to integrate those businesses. Could you just help us understand what you saw from an industrial perspective that drove that decision?
>
> **Cozza**: Yes, I think -- well, to try to summarize it at a high level from the strategy from 4 years ago is, I think that we thought that we could grow not only the service side but the store side and ultimately, compete with some of the bigger players, by expanding our commercial programs. And I think what we've sort of determined over the last 2 years is that we can compete on the store side against the big guys in certain markets where we have decent store density. But it's going to be very difficult to compete on a national level with the likes of an Advance or an AutoZone or O'Reilly's, right? And so I think that we've -- the change in strategy has basically been to split -- pair down the store side of the business and focus in certain core markets where we are competitive and have a decent commercial position and separate out the service side of the business, where we're doing quite well and have a lot of growth tailwinds.

131. During the Fourth Quarter Earnings Conference Call, analysts were given a slide presentation by Cozza and CFO Cho (the "Fourth Quarter 2019 Earnings Presentation"). In an initial slide entitled "Q4 2019 Highlights and Recent Developments," IEP noted its net loss for Q4'19 of $157 million, or a loss of $0.74 per depositary unit, followed by the next bullet point stating "Board declared $2.00 quarterly distribution payable in either cash or additional units."

132. In the same slide, IEP highlighted the December 2019 issuance of $750 million in aggregate principal amount of 5.250% senior unsecured notes due 2027, and that in January 2020, IEP issued an additional $600 million in aggregate principal amount of 4.750% senior unsecured notes due 2024, and an additional $250 million in aggregate principal amount of 5.250% senior unsecured notes due 2027, while repaying in full in February 2020 IEP's $1.35 billion 5.875% senior unsecured notes due 2022.

133. Another side in the Fourth Quarter 2019 Earnings Presentation devoted to Automotive in a section entitled "Highlights and Recent Developments" stated:

- Icahn Automotive is implementing a multi-year plan to separate its aftermarket parts and automotive service businesses into two separate operating companies. The plan includes streamlining Icahn Automotive's corporate and field support teams; facility closures, consolidations and conversions; inventory optimization actions; and refocusing its automotive parts business on certain core markets.

- Our Automotive segment's priorities include:

  -Positioning the service business to take advantage of opportunities in the do-it-for-me market and vehicle fleets;

  -Optimizing the value of commercial parts distribution business in certain high-volume core markets;

  -Exiting the Automotive parts distribution business in certain low volume, non-core markets;

  -Improving inventory management across Icahn Automotive's parts and tire distribution network;

  -Business process improvements, including investments in our supply chain and information technology capabilities.

- Q4 2019 Adjusted EBITDA was $(31) million compared to $(56) million in Q4 2018

  -Elevated expense related to transformation plan and investments in commercial parts business.

134. "Subsidiary Revolver Availability" for Automotive was reported as $107 million. As before, the slide presentation entitled "Liquidity serves as a Competitive Advantage" assured the analysts that "our operating subsidiaries and the Holding company maintain ample liquidity to take advantage of attractive opportunities for their respective businesses," reporting liquid assets of $8.077 billion and "Total Liquidity" of $8.684 billion. "Indicative Net Asset Value" as of December 31, 2019 was reported as $7.067

billion versus $7.491 billion as of September 30, 2019, compared to $8.152 billion as of the prior year ending December 31, 2018.

135. The disclosures made by IEP and the individual defendants during and/or respecting the fiscal year ending December 31, 2019**,** were untrue because they:

a. Concealed from the market Defendants' ***dividend inducement scheme*** by which IEP and the Individual Defendants used heightened dividend yields as an inducement to buoy or inflate the trading price of IEP units and insulate Mr. Icahn from a massive margin call on his personal margin loan, as more fully discussed below, as deceived investors clamored to invest in a so-called "dividend stock," ostensibly offering increased asset values;

b. Concealed from the market that the loan-to-value ratios in Mr. Icahn's debt covenants tethered to IEP's unit trading price created a significant and ***material undisclosed risk of a margin call*** on Mr. Icahn's personal loans;

c. ***Reported indicative net asset values were substantially inflated***, due to a combination of overly aggressive marks on IEP's investments and continued year to date underperformance in operating assets. Unlike GAAP NAV, "indicative" NAV depends upon the chosen valuation methodology one applies, as well as the assumptions regarding the inputs to the valuation calculations. IEP's indicative NAV, at all times, well exceeded its GAAP NAV, as shown in the table below at ¶ 308;

d. Concealed and failed to disclose that de-linking Mr. Icahn's loan covenant LTV ratios from IEP's unit trading price would ***adversely impact the Company's distribution of dividends***; and

e. *See also,* the subpart below entitled Additional Bases for Falsity of Defendants' Statements.

Statements Regarding 2020 Financial Results

136. On May 8, 2020, IEP issued a press release reporting its financial results for

its first quarter 2020 ending March 31, 2020 ("First Quarter 2020 Press Release"). Highlighted in a bold bullet-point at the top was the disclosure of a first quarter "net loss attributable to Icahn Enterprises of $1.4 billion, or a loss of $6.34 per depositary unit" and that the "Board approves a quarterly distribution of $2.00 per depositary unit" for the first quarter of 2020. As before, this dividend was approved by the Board of Directors of the general partner and payable in cash, or in additional units if so elected.

137. The First Quarter 2020 Press Release reported total assets of $24.306 billion as of March 31, 2020, including goodwill of $281 million, versus $24.639 billion as of December 31, 2019, which included goodwill of $282 million. Icahn Automotive Group was reported to have an Indicative Net Asset Value of $1.730 billion as of Q1'20 versus $1.750 billion as of December 31, 2019, and total "Indicative Net Asset Value" for all IEP subsidiaries was reported as $3.699 billion as of December 31, 2019. As before, IEP noted that "Indicative Net Asset Value" was used as an "additional method for considering the value of the Company's assets, and we believe that this information can be helpful to investors," but "does not represent the market price at which the units trade," and "[a]ccordingly, data regarding indicative net asset value is of limited use and should not be considered in isolation."

138. On May 8, 2020, Defendants Cozza and Cho held a conference call with market analyst whereby they discussed the Company's First Quarter 2020 financial results ("First Quarter 2020 Earnings Conference Call"). Cozza remarked that the Company had a "net loss" of "$1.4 billion" or "$6.34" per depositary unit in the first quarter, compared to a net loss of $394 million or $2.02 per unit in the prior year period, while stating that IEP's investment "performance was negatively impacted by certain large, long equity positions, which were disproportionately impacted by the Covid-19 pandemic, offset by significant gains and were short equity and credit index positions." Cozza disclosed that the CVR Energy segment completed a one billion dollar senior unsecured notes offering in

January, 2020, refinancing $500 million of existing senior unsecured notes and adding $500 million of cash to the balance sheet.

139. Cozza further disclosed net sales and service revenues for the Automotive segment of "$635 million for Q1 of 2020," adding that "the Covid-19 pandemic and the impacts of the actions taken by governments and others have significantly contributed to the decline in revenues, in particular the Automotive Services revenue and commercial sales revenue, which, until recently, were experiencing growth on an organic basis." Cozza assured market analysts that "Icahn Automotive Group continues to push forward with the multiyear transformational plan to restructure the operations and improve profitability." Cozza completed his presentation on the call stating: "we closed the quarter with a strong liquidity position and are actively pursuing a number of opportunities …."

140. CFO Cho also presented on the call, commencing with briefly reviewing consolidated financial results and then highlighting the performance of operating segments, while making a "comment on the strength of our balance sheet." After effectively repeating the financial results mentioned in the Q1'20 Press Release and by Cozza, he provided detail regarding the performance of individual segments, noting the CVR Energy successfully raised one billion dollars of new debt in January and used $500 million of the proceeds to redeem existing debt, leaving cash at the end of Q1 at $805 million. Then, with respect to the Automotive segment, CFO Cho stated:

> Q1 2020 net sales and service revenues for Icahn Automotive Group were $635 million, down $58 million from the prior year period with $14 million of the decline related to store closures and the remainder related to sales slowdown in March due to COVID-19. Q1 2020 adjusted EBITDA was a loss of $42 million compared to a loss of $23 million in the prior year. Icahn Automotive Group continues to push forward with a multiyear transformational plan to restructure the operations and improve profitability. The company has been closing parts stores in select markets since 4Q 2019 and was making progress on the separation of the 2 businesses. Due to the COVID-19 pandemic, Icahn Auto company has accelerated closures of parts stores that were scheduled for later in the year.

> In addition, the company has adjusted store hours and staffing to match reduced demand, implemented significant cost savings measures at corporate functions and reduced capital spending to minimum levels.

141. CFO Cho completed his presentation by turning to the Company's liquidity position, assuring the market that "[w]e maintain ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities" noting that the cash, cash equivalent and the Investment Funds and Revolver availability totaled approximately $7.3 billion, with the subsidiaries having $941 million of cash and $583 of unused credit facilities "to enable them to take advantage of attractive opportunities," concluding: "in summary, we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside of our existing operating segments."

142. With regard to the Automotive Group, CFO Cho and Robert Sullivan, Midocean analyst, had the following exchange:

> **Sullivan**: I was wondering if you could just generally give an update on the Automotive Group just in terms of the store closures, in terms of what level of activity that you've seen just with broad business slowdown. And I was wondering just generally where you think we are in terms of what kind of getting that back to positive EBITDA.
>
> **Cho**: Yes. So in terms of the closures, so just to remind you, many of our stores have both parts and service within the same building. And the --what we're doing right now is we're closing just the parts side of that business, and the service side of that building remains open. So I'd say we've closed around -- within the Pep Boys chain, around roughly 200-ish of the parts stores, and the service side remains open. And we've been bringing a lot of that inventory back into the DCs and recirculating it throughout the remaining stores that we do keep in the core and denser markets that we have. In terms of overall kind of market dynamics, I'd say we're in line with other players in the automotive kind of aftermarket industry. In most jurisdictions, the auto -- the parts distribution and service were considered essential services. So many of our stores did not -- most of our stores did not close, but demand was down significantly.

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> …on the parts side, we're still -- with our new footprint, we've got to optimize the supply chain and optimize the back office in order to be rightsized for the new footprint of the stores that we have. And so that's going to be through probably early next year in order to get that done.

143. During the First Quarter 2020 Earnings Conference Call, there was a slide presentation, the first of which referred to "Q1'20 Highlights and Recent developments, indeed," which, among its first bullet points, noted the "[n]et loss attributable to Icahn Enterprises for Q1 2020 was $1.4 billion, or a loss of $6.34 depositary unit" and highlighted that the Board approved a $2.00 quarterly distribution per depositary unit.

144. Another slide called "Automotive Segment," included a bolded section entitled "Highlights and Recent Developments" which stated as follows:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers
- Our Automotive segment also includes our investment in 767 Auto Leasing LLC, a joint venture created by us to purchase vehicles for lease

Summary Segment Financial Results

Automotive Segment ($Millions)	Three Months Ended March 31, 2020	2019
Selected Income Statement Data:		
Net sales and other revenue from operations	$635	$693
Adjusted EBITDA	(42)	(23)
Net income (loss)	(73)	(42)
Adjusted EBITDA attributable to IEP	($42)	($23)
Net income (loss) attributable to IEP	(73)	(42)
Capital Expenditures	**$9**	**$13**

Highlights and Recent Developments

- Icahn Automotive is implementing a multi-year plan to separate its aftermarket parts and automotive service businesses into two separate operating companies. Our Automotive segment's priorities include:
  - Positioning the service business to take advantage of opportunities in the do-it-for-me market and vehicle fleets;
  - Optimizing the value of the commercial parts distribution business in certain high-volume core markets;
  - Exiting the automotive parts distribution business in certain low volume, non-core markets;
  - Improving inventory management across Icahn Automotive's parts and tire distribution network;
  - Business process improvements, including investments in our supply chain and information technology capabilities.
- Q1 2020 Adjusted EBITDA was $(42) million compared to $(23) million in Q1 2019
  - Significant parts closure activities in Q1
  - Parts store closures scheduled for remainder of 2020 accelerated into April
  - Inventory reduction of $47 million since December, 2019
  - Adjusted operating hours and staffing to match significantly reduced demand

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145. On August 7, 2020, IEP issued a press release announcing its financial results for the second quarter of 2020 ending June 30, 2020 ("Second Quarter 2020 Press

Release"). In a bold bullet pointed highlight commencing the disclosure to the market, the Second Quarter 2020 Press Release reported "[s]econd quarter net income attributable to Icahn Enterprises of $299 million, or $1.36 per depositary unit." The Second Quarter Press Release further reported that "[o]n August 4, 2020, the Board of Directors of the general partner of Icahn Enterprises declared a quarterly distribution in the amount of $2.00 per depositary unit" which dividend would be paid in cash, or additional units if so elected.

146. The Second Quarter 2020 Press Release reported "Total Assets" of $24.706 billion for Q2'20, which included $282 million in goodwill. As in prior press releases, it was disclosed that IEP uses "indicative net asset value" as an "additional method for considering the value of the Company's assets" adding that "we believe that this information can be helpful to investors" while noting that "the indicative net asset value does not represent the market price at which the units trade" and "[a]ccordingly, data regarding indicative net asset value is of limited use and should not be considered in isolation." Then, IEP reported total "Indicative Net Asset Value" of $4,269 billion as of Q2'20 versus $7,067 billion as of December 31, 2019, which included $1,737 billion for Icahn Automotive Group as of June 30, 2020, compared to $1,750 billion as of December 31, 2019.

147. On August 7, 2020, Defendants held a follow-on conference call with Jefferies market analysts James John and Robert Steele to discuss the Company's financial results for its second quarter of 2020 ending June 30, 2020 ("Second Quarter 2020 Earnings Conference Call"). Defendant Cozza provided financial highlights, including that Icahn Enterprises had net income of $299 million or $1.36 per LP unit compared to a net loss of $498 million or $2.49 per unit in the second quarter of the prior year. Cozza reported that "[n]et sales and service revenues for our Automotive segment were $587 million for Q2 of 2020," adding that the "COVID-19 pandemic and the impacts of the actions taken by governments and others have significantly contributed to the decline in revenues, and particularly the automotive services revenue and commercial sales revenue, which, until

recently, were experiencing growth on an organic basis." Cozza added that "Icahn Automotive Group continues to push forward with the multiyear transformational plan to restructure the operations and improve profitability. We have made significant progress separating our automotive service business from our aftermarket parts business and are on track to substantially complete the separation by the end of this year."

148. During the Second Quarter 2020 Earnings Conference Call, CFO Cho briefly reviewed the Company's consolidated results and highlighted the performance of its operating segments, adding a "comment on the strength of our balance sheet." CFO Cho stated as follows regarding the Automotive segment:

> Q2 2020 net sales and service revenue for Icahn Automotive Group was $587 million, down $157 million from the prior year period with $43 million of the decline related to store closures and the remainder primarily related to the sales slowdown due to COVID-19. Q2 2020 adjusted EBITDA, which excludes the losses associated with closed stores, was a loss of $7 million compared to a loss of $3 million in the prior year period.
>
> Icahn Automotive continues to push forward with a multiyear transformational plan to restructure the operations and improve profitability. Icahn Auto accelerated closures of certain parts stores, adjusted store hours and staffing to match reduced demand, implemented significant cost-savings measures and reduced capital spending to minimum levels. All these initiatives helped Icahn Auto offset the impact of significant sales decline and position the company for profitability as sales return."

149. CFO Cho ended his presentation stating "[i]n summary, we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside of our existing operating segments."

150. Thereafter, market analyst Steele of Jefferies and Defendant Cozza had the following exchange regarding the Automotive segment:

> **Steele**: Okay. And then on the Automotive segment, obviously, you pivoted pretty quickly and you were able to cut costs. But I'm just curious when the environment improves, will there be any onetime costs or just kind of

any ramifications from what you've done in the past couple of months to limit costs? Just curious on how quickly you can ramp back up there and what you might tell.

Cozza: Yes, sure. I think – I don't anticipate any material onetime costs in ramping back up. I think frankly, the unfortunate pandemic has really forced companies to operate on a more lean basis and increase productivity. And our management team at Icahn Automotive Group on both sides of the business, but particularly the service side of the business, really made some drastic moves to preserve the value of the business. And I think they're seeing as business volumes improve, the cost structure doesn't need to nearly improve at the same percentage as it once was. So I actually, not only do I not see sort of onetime charges, I sort of see better operating leverage going forward.

151. During the Second Quarter 2020 Earnings Conference Call, Defendants provided analysts with a slide presentation, including an initial slide entitled "Q2 2020 Highlights and Recent Developments," that noted in two bullet points first that "[n]et income attributable to Icahn Enterprises for Q2 2020 was $299 million, or $1.36 per depositary unit" and second that the "Board declared $2.00 quarterly distribution payable in either cash or additional units." Another slide entitled "Financial Performance" showing "Net Income (Loss) Attributable to Icahn Enterprises" graphically illustrated that Q2'20 resulted in a $299 million gain while there was a net loss in Q2'19, the first six months of 2020, and the first six months of 2019 of ($498), ($1,085) and ($892) respectively. Still, the Board chaired by Carl Icahn declared a $2 per share dividend in each of those quarters, and again in the second quarter of 2020.

152. With regard to the Automotive segment, a separate slide entitled "Segment: Automotive" stated under the bold heading "Highlights and Recent Developments" as follows:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers
- Our Automotive segment also includes our investment in 767 Auto Leasing LLC, a joint venture created by us to purchase vehicles for lease

Summary Segment Financial Results

Automotive Segment ($Millions)	Three Months Ended June 30, 2020	Three Months Ended June 30, 2019	Six Months Ended June 30, 2020	Six Months Ended June 30, 2019
Selected Income Statement Data:				
Net sales and other revenue from operations	$587	$744	$1,222	$1,437
Adjusted EBITDA	(7)	(3)	(49)	(26)
Net income (loss)	(50)	(38)	(123)	(80)
Adjusted EBITDA attributable to IEP	($7)	($3)	($49)	($26)
Net income (loss) attributable to IEP	(50)	(38)	(123)	(80)
Capital Expenditures	**$7**	**$9**	**$16**	**$22**

Highlights and Recent Developments

- Icahn Automotive is implementing a multi-year plan to separate its aftermarket parts and automotive service businesses into two separate operating companies. Our Automotive segment's priorities include:
  - Positioning the service business to take advantage of opportunities in the do-it-for-me market and vehicle fleets;
  - Optimizing the value of the commercial parts distribution business in certain high-volume core markets;
  - Exiting the automotive parts distribution business in certain low volume, non-core markets;
  - Improving inventory management across Icahn Automotive's parts and tire distribution network;
  - Business process improvements, including investments in our supply chain and information technology capabilities.
- Q2 2020 Adjusted EBITDA was $(7) million compared to $(3) million in Q2 2019
  - Significant parts closure activities in Q2
  - Parts store closures scheduled for remainder of 2020 accelerated
  - Inventory reduction of $116 million since December, 2019
  - Adjusted operating hours and staffing to match significantly reduced demand

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153. Another Second Quarter 2020 Presentation slide reported total liquidity of $7.022 billion, including subsidiaries' cash and cash equivalents of $727 million, and a Revolver availability respecting Automotive of $108 million, with a representation that IEP's subsidiaries and Holding Company "maintain ample liquidity to take advantage of attractive opportunities for their respective businesses." As for "Indicative Net Asset Value," another slide stated for Icahn Automotive Group $1,737 billion in the second quarter of 2020 versus $1,844 billion in the second quarter of 2019.

154. In a Company press release issued on November 6, 2020, entitled "Icahn Enterprises L.P. Reports Third Quarter 2020 Financial Results" ("Third Quarter 2020 Press Release") it was reported that Icahn Enterprises suffered a third quarter loss of $714 million, or a loss of $3.14 per depositary unit compared to a third quarter 2019 loss of $49 million or $0.24 per depositary unit. Nonetheless, it was reported in a bold bullet point that the "Board approves quarterly distribution of $2.00 per depositary unit." Total assets as of September 30, 2020 were reported to be $22.824 billion versus $24.639 billion as of December 31, 2019 with goodwill of $284 million in the third quarter of 2020 versus $282

million as of December 31, 2019. Once again, the Company's "Use of Indicative Net Asset Value" was stated using identical boilerplate language as previously. Indicative Net Asset Value was reported as of September 30, 2020 of $3.119 billion for the Company's market valued subsidiaries and investments and "other subsidiaries" with Icahn Automotive valued at $1.654 billion, versus Indicate Net Asset Value of $7.067 billion as of December 31, 2019, including the Automotive valued at $1.750 billion.

155. On November 6, 2020, the Company held a Third Quarter 2020 Icahn Enterprises LP Earnings Conference Call ("Third Quarter 2020 Earnings Conference Call") with analyst Daniel Thomas Fannon of Jefferies – a senior equity research analyst. During the call, Defendant Cozza summarized financial results and the performance of business segments, reporting that for the third quarter of 2020, the Company had a net loss of $714 million or $3.14 per depositary unit compared to a loss of $49 million or $0.24 per unit in the prior year period. Cozza reported that net sales and service revenues for the Automotive segment were $660 million for the third quarter of 2020, explaining that "the COVID-19 pandemic and the impacts of the actions taken by governments and others have significantly contributed to the decline in revenues," that "Icahn Automotive Group continues to push forward with the multiyear transformational plan to restructure the operations and improve profitability" and that IEP "made significant progress separating our automotive service business from our aftermarket parts business and are on track to substantially complete the separation by the end of this year."

156. With regard to the Automotive segment, CFO Cho stated:

> Q3 2020 net sales and service revenues for Icahn Automotive Group were $660 million, down $84 million from the prior year period, with $48 million of the decline related to store closures and the remainder primarily related to the sales slowdown due to COVID-19. Q3 2020 adjusted EBITDA, which excludes losses associated with closed stores was $6 million, compared to a loss of $23 million in the prior period.
>
> Icahn Automotive continues to push forward with a multi-year

> transformation plan to restructure the operations and improve profitability. Icahn Auto accelerated closures of certain parts stores, adjusted store hours and staffing to match reduced demand, implemented significant cost savings measures and reduced capital spending to minimum levels. All these initiatives helped Icahn Auto offset the impact of significant sales decline and position the Company for profitability as sales return."

157. CFO Cho, discussing IEP's liquidity position, assured the market that Defendant maintains "ample liquidity at the holding company and at each operating subs to take advantage of attractive opportunities[,] end[ing] Q3'20 cash, cash or equivalents, our investments and investment funds and revolver availability totaling approximately $6.5 billion[,] [with] [o]ur the subsidiaries having approximately $775 million of cash and $591 million of undrawn credit facilities to enable them to take advantage of attractive opportunities." Summarizing, CFO Cho stated "we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside of our existing operating segments."

158. In connection with the Third Quarter 2020 Earnings Conference Call, Defendants used a slide presentation and materials entitled "Q3 2020 Earnings Presentation" on November 6, 2020. The first substantive slide entitled "Q3 2020 Highlights and Recent Developments," reported the net loss and, in a separate bullet point that the "Board declared $2.00 quarterly distribution payable in either cash or additional units." An additional slide reported on "Segment: Automotive," and under a section entitled "Highlights and Recent Developments" stated as follows:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers
- Our Automotive segment also includes our investment in 767 Auto Leasing LLC, a joint venture created by us to purchase vehicles for lease

Summary Segment Financial Results

Automotive Segment	Three Months Ended September 30,		Nine Months Ended September 30,	
($Millions)	2020	2019	2020	2019
Selected Income Statement Data:				
Net sales and other revenue from operations	$660	$744	$1,882	$2,181
Adjusted EBITDA	6	(23)	(42)	(49)
Net income (loss)	(26)	(48)	(149)	(128)
Adjusted EBITDA attributable to IEP	$6	($23)	($42)	($49)
Net income (loss) attributable to IEP	(26)	(48)	(149)	(128)
Capital Expenditures	**$9**	**$20**	**$25**	**$42**

Highlights and Recent Developments

- Icahn Automotive is implementing a multi-year plan to separate its aftermarket parts and automotive service businesses into two separate operating companies. Our Automotive segment's priorities include:
  - Positioning the service business to take advantage of opportunities in the do-it-for-me market and vehicle fleets;
  - Optimizing the value of the commercial parts distribution business in certain high-volume core markets;
  - Exiting the automotive parts distribution business in certain low volume, non-core markets;
  - Improving inventory management across Icahn Automotive's parts and tire distribution network;
  - Investment in customer experience initiatives such as enhanced customer loyalty programs and selective upgrades in facilities;
  - Investment in employees with focus on training and career development investments; and
  - Business process improvements, including investments in our supply chain and information technology capabilities
- Q3 2020 Adjusted EBITDA was $6 million compared to $(23) million in Q3 2019
  - Significant parts closure activities in Q3
  - Inventory reduction of $147 million since December 2019
  - Adjusted operating hours and staffing to match significantly reduced demand

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159. In a slide entitled "Liquidity Serves as a Competitive Advantage," the market was assured that "our operating subsidiaries and the holding company maintain ample liquidity to take advantage of attractive opportunities for their respective businesses," reporting subsidiaries cash and cash equivalents totaling $775 million as of September 30, 2020, with subsidiary revolver availability for Automotive of $132 million, and total liquidity for the Company of $6.496 billion. With regard to "indicative net asset value," another slide noted a valuation of $3.119 billion as of the end of September 30, 2020, versus $7.491 billion as of September 30, 2019.

160. On February 26, 2021, the Company issued a press release entitled "Icahn Enterprises L.P. Reports Fourth Quarter and Full Year 2020 Financial Results." Therein, the Company stated, in relevant part:

> Icahn Enterprises L.P. (Nasdaq:IEP) is reporting fourth quarter 2020 revenues of $2.8 billion and net income attributable to Icahn Enterprises of $146 million, or $0.61 per depositary unit. For the three months ended

> December 31, 2020, Adjusted EBITDA attributable to Icahn Enterprises was $420 million compared to $111 million for the three months ended December 31, 2019. For the three months ended December 31, 2020, Adjusted EBIT attributable to Icahn Enterprises was $328 million compared to $22 million for the three months ended December 31, 2019.
>
> For the year ended December 31, 2020, revenues were $6.1 billion and net loss attributable to Icahn Enterprises was $1.7 billion, or a loss of $7.33 per depositary unit. For the year ended December 31, 2019, revenues were $9.0 billion and net loss attributable to Icahn Enterprises was $1.1 billion, or a loss of $5.38 per depositary unit, including a loss of $1.1 billion from continuing operations, or $5.23 per depositary unit. For the year ended December 31, 2020, Adjusted EBITDA attributable to Icahn Enterprises was $(738) million compared to $(462) million for the year ended December 31, 2019. For the year ended December 31, 2020, Adjusted EBIT attributable to Icahn Enterprises was $(1.1) billion compared to $(818) million for the year ended December 31, 2019.
>
> On February 24, 2021, the Board of Directors of the general partner of Icahn Enterprises declared a quarterly distribution in the amount of $2.00 per depositary unit, which will be paid on or about April 28, 2021 to depositary unitholders of record at the close of business on March 26, 2021.

161. On February 26, 2021, Company also disclosed its open market sales agreement with Jefferies pursuant to which, the Company could issue and sell the units in aggregate offering amount of up to $400,000,000 through Jefferies.

162. Jefferies analyst reports evinced the conditioning of the market to believe the high dividend payout would continue into perpetuity. For example, a report published by Jefferies on March 1, 2022, provided three scenarios supporting its price target for the units. Each of the "base case", "upside case", and "downside case" assumed either an $8.00 per year/per unit payout into perpetuity (base case and downside case) or growth of 5% on the $8.00 dividend in perpetuity. The Jefferies report did not mention any circumstances upon which the dividend might be reduced.

163. On or about March 31, 2021, IEP offered 10.78 million depositary units for sale to the public at or about $56.02 per unit, for proceeds of $604 million.

164. On April 5, 2021, IEP announced that Aris Kekedjian would replace

Defendant Cozza as CEO, effective April 5, 2021. Kekedjian had previously served as IEP's chief investment officer. News reports indicated that both Defendants Cozza and Cho were leaving IEP and attributed the departures, in part, to an unwillingness to relocate to Florida. A replacement for outgoing CFO Cho was not named at the time.

165. The disclosures made by IEP and the individual defendants during and/or respecting the fiscal year ending December 31, 2020**,** were untrue because they:

a. Concealed from the market Defendants' ***dividend inducement scheme*** by which IEP and the Individual Defendants used heightened dividend yields as an inducement to buoy or inflate the trading price of IEP units and insulate Mr. Icahn from a massive margin call on his personal margin loan, as more fully discussed below, as deceived investors clamored to invest in a so-called "dividend stock," ostensibly offering increased asset values;

b. Concealed from the market that the loan-to-value ratios in Mr. Icahn's debt covenants tethered to IEP's unit trading price created a significant and ***material undisclosed risk of a margin call*** on Mr. Icahn's personal loans;

c. ***Reported indicative net asset values were substantially inflated***, due to a combination of overly aggressive marks on IEP's investments and continued year to date underperformance in operating assets. Unlike GAAP NAV, "indicative" NAV depends upon the chosen valuation methodology one applies, as well as the assumptions regarding the inputs to the valuation calculations. IEP's indicative NAV, at all times, well exceeded its GAAP NAV, as shown in the table below at ¶ 308;

d. Concealed and failed to disclose that de-linking Mr. Icahn's loan covenant LTV ratios from IEP's unit trading price would ***adversely impact the Company's distribution of dividends***; and

e. *See also,* the subpart below entitled Additional Bases for Falsity of Defendants' Statements.

Statements Regarding 2021 Financial Results

166. On May 7, 2021, IEP issued a press release disclosing financial results for the fiscal quarter ending March 31, 2021 (the "First Quarter 2021 Press Release"). The First Quarter 2021 Press Release was also filed with the SEC as an exhibit to a Form 8-K. The First Quarter 2021 Press Release highlighted the Company's $2.00 per depositary unit distribution and disclosed various financial metrics including, among other things:

> - **First quarter net income attributable to Icahn Enterprises of $162 million, or $0.65 per depositary unit**
>
> - **Board approves quarterly distribution of $2.00 per depositary unit**
>
> **Sunny Isles Beach, Fla,** May 7, 2021 (GLOBE NEWSWIRE) **--** Icahn Enterprises L.P. (Nasdaq:IEP) is reporting first quarter 2021 revenues of $3.4 billion and net income attributable to Icahn Enterprises of $162 million, or $0.65 per depositary unit.
>
> ***
>
> For the three months ended March 31, 2021, Adjusted EBITDA attributable to Icahn Enterprises was $435 million compared to $(1.3) billion for the three months ended March 31, 2020.
>
> ***
>
> For the quarter ended March 31, 2021, indicative net asset value increased by $668 million to $4.22 billion compared to $3.55 billion as of December 31, 2020.
>
> On May 5, 2021, the Board of Directors of the general partner of Icahn Enterprises declared a quarterly distribution in the amount of $2.00 per depositary unit, which will be paid on or about June 30, 2021 to depositary unitholders of record at the close of business on June 1, 2021.

167. On May 7, 2021, the Company also held a conference call, hosted by Defendants Cozza and Cho, to present and discuss the results for the first quarter of 2021. During the First Quarter 2021 conference call, Defendant Cozza discussed the Company's results, disclosing "net income attributable to Icahn Enterprises of $162 million or $0.65

per LP unit compared to a net loss of $1.4 billion or $6.34 per LP unit in the prior year period." Cozza announced that EBITDA similarly improved, rising to $435 million compared to a loss of $1.3 billion in the first quarter of the prior year.

168. Defendant Cozza also highlighted the performance of the Automotive segment, noting that "[w]e are beginning to see our automotive service business revenues return to pre-pandemic levels. As a reminder, Icahn Automotive Group continues to push forward with the multiyear transformational plan to restructure the operations and improve profitability, which is illustrated by the significant reduction in losses in Q1 versus the prior year quarter." Cozza further stated that "[w]e have substantially completed the legal separation of our automotive service business from our aftermarket parts business, which will provide the service business for new growth and value-enhancing opportunities."

169. Cozza also noted the issuance of two tranches of senior unsecured notes of $750 million at 4.38% and $455 million at 5.25%, the proceeds of which were used to pay the principal of 6.25% senior unsecured notes due in 2022. Cozza also acknowledged his upcoming departure, announcing that "in connection with the continuing consolidation of all of our operations into our Florida office, we announced the hiring of Aris Kekedjian, the former Chief Investment Officer of General Electric Company, as our new President and CEO."

170. The slide presentation accompanying the First Quarter 2021 Conference Call highlighted the Company's $2.00 per depositary unit distribution for the quarter.

171. Following Defendant Cozza's comments, Defendant Cho joined the call to discuss the Company's "consolidated results and then highlight the performance of our operating segments and comment on the strength of our balance sheet."

172. Turning to the Automotive segment, Cho noted that net sales and service revenue had fallen to $598 million, down $37 million from the prior year period, attributing this decline to "[s]tore closures related to the transformation plan" while asserting that "Icahn Auto continues to push forward with a multiyear transformational plan to

restructure the operations and improve profitability." The accompanying investor presentation highlighted this multi-year plan:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers
- Our Automotive segment also includes our investment in 767 Auto Leasing LLC

Summary Segment Financial Results

Automotive Segment	Three Months Ended March 31,	
($Millions)	2021	2020
Selected Income Statement Data:		
Net sales and other revenue from operations	$598	$635
Adjusted EBITDA	(9)	(42)
Net income (loss)	(46)	(73)
Capital Expenditures	**$8**	**$9**

Highlights and Recent Developments

- Icahn Automotive is implementing a multi-year plan to separate its aftermarket parts and automotive service businesses into two separate operating companies. Our Automotive segment's priorities include:
  - Positioning the service business to take advantage of opportunities in the do-it-for-me market and vehicle fleets;
  - Optimizing the value of the commercial parts distribution business in certain high-volume core markets;
  - Exiting the automotive parts distribution business in certain low volume, non-core markets;
  - Improving inventory management across Icahn Automotive's parts and tire distribution network;
  - Investment in customer experience initiatives such as selective upgrades in facilities;
  - Investment in employees with focus on training and career development investments; and
  - Business process improvements, including investments in our supply chain and information technology capabilities
- Q1 2021 Adjusted EBITDA was $(9) million compared to $(42) million in Q1 2020

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173. Defendant Cho concluded his presentation with a discussion of IEP's liquidity, asserting that "[w]e maintain ample liquidity at the holding company and at each of our operating subs to take advantage of attractive opportunities. We ended Q1 2021 [with] cash, cash equivalents and our investment in the funds and revolver availability totaling approximately $7.2 billion. Our subsidiaries have approximately $808 million of cash and $586 million of undrawn credit facilities to enable them to take advantage of attractive opportunities." Before turning the floor over to questions, Defendant Cho asserted that IEP "continue[d] to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside of our existing

operating segments."

174. Defendants Cozza and Cho then entertained questions from participants in the call. Daniel Fannon of Jefferies, LLC, queried Cozza about the Company's automobile segment, asking: "on the Auto segment. Just curious about how the pandemic has potentially shifted that transition or change some of the factors in terms of how you're thinking about that business is going to look at the end of that multiyear transition?" Cozza responded, noting that "I would say we accelerated the timeline of closing unprofitable parts stores on the parts side of the business." Cozza continued by stating that the biggest benefits from the ongoing transition were yet to be seen, contending "[t]he service side of the business is where -- at the end of this restructuring is where we think there's the most opportunity."

> We have great secular tailwinds there. We've restructured that side of the business, and you should see dramatic improvement in profitability. On the service side, we have it separated where we're managing it internally, totally separate from the parts business. And what I would add -- and I referenced in some of my opening commentary, we're seeing a lot of pent-up demand that we're capturing our share of -- on top line growth, where for Q1, we were back to Q1 of '19 levels, not Q1 of '20. Obviously, great growth for 2020, but that's nothing to brag about, given the low bar from the pandemic.
>
> And so we're excited about the growth profile. I mean, we've talked about this, and Sung's talked about this over the last year of the size of the car park, the age of the vehicle fleet in the U.S. and the secular tailwinds that should make the service business very valuable on a go-forward basis.

With that, Defendants Cozza and Cho closed out the conference call.

175. On August 6, 2021, IEP issued a press release disclosing financial results for the fiscal quarter ending June 30, 2021 (the "Second Quarter 2021 Press Release"). The First Quarter 2021 Press Release was also filed with the SEC as an exhibit to a Form 8-K. In the Second Quarter 2021 Press Release, the Company highlighted its quarterly distribution of $2.00 per depositary unit even in the face of a net loss of $0.53 per depositary unit. The Second Quarter 2021 Press Release stated, among other things:

Icahn Enterprises L.P. Reports Second Quarter 2021 Financial Results

- **Second quarter net loss attributable to Icahn Enterprises of $136 million, or a loss of $0.53 per depositary unit**
- **Board approves quarterly distribution of $2.00 per depositary unit**

Sunny Isles Beach, Fla, August 6, 2021 (GLOBE NEWSWIRE) **--** Icahn Enterprises L.P. (Nasdaq:IEP) is reporting second quarter 2021 revenues of $3.0 billion and net loss attributable to Icahn Enterprises of $136 million, or a loss of $0.53 per depositary unit.

***

For the three months ended June 30, 2021, Adjusted EBITDA attributable to Icahn Enterprises was $192 million compared to $696 million for the three months ended June 30, 2020.

***

For the six months ended June 30, 2021, indicative net asset value increased by $956 million to $4.50 billion compared to $3.55 billion as of December 31, 2020. The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries which are not included in our GAAP earnings reported above.

On August 4, 2021, the Board of Directors of the general partner of Icahn Enterprises declared a quarterly distribution in the amount of $2.00 per depositary unit, which will be paid on or about September 29, 2021 to depositary unitholders of record at the close of business on August 20, 2021.

176. On August 6, 2021, the Company also held a conference call, hosted by Defendants Kekedjian and Willetts, to present and discuss the results for the second quarter of 2021. During the Second Quarter 2021 Conference Call, Defendant Kekedjian discussed the company's results, beginning with an assertion that the Company's net loss of $136 million or $0.53 per unit compared to net income of $299 million or $1.36 per unit in the prior year period was "primarily driven by interest expense on our senior unsecured notes and income taxes offset in part by gains in our investment segment."

177. Kekedjian also touted the Company's ability to issue unsecured notes in order to pay off higher interest notes that were about to come due. "In April of 2021, Icahn

Enterprises issued $455 million of 5.25% senior unsecured notes due in 2027. The proceeds were used to repay the remaining $455 million principal amount of 6.25% senior unsecured notes due in 2022."

178. Finally, Kekedjian referred to a substantial increase in the Company's indicative net asset value, noting that it had "increased by $956 million to $4.5 billion, compared to $3.55 billion as of December 31, 2020. We closed the quarter with cash and investments in the funds of over $6.9 billion."

179. Following Defendant Kekedjian's comments, Defendant Willetts discussed the Company's financial results and "highlight[ed] the performance of our operating segments and comment[ed] on the strength of our balance sheet."

180. Discussing the Automotive segment, Willetts asserted that the Company was "continu[ing] to push forward with a multiyear transformational plan to restructure the operations and improve profitability." That transformation had resulted in additional store closures, but those closures "declined for Q2 '21 when compared to the prior year period."

181. The slide presentation released by IEP to accompany the Second Quarter 2021 Conference Call also highlighted the ongoing transformation:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary, Icahn Automotive Group LLC ("Icahn Automotive").
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers.
- Our Automotive segment also includes our investment in 767 Auto Leasing LLC.

Summary Segment Financial Results

Automotive Segment	Three Months Ended June 30,		Six Months Ended June 30,	
($Millions)	2021	2020	2021	2020
Selected Income Statement Data:				
Net sales and other revenue from operations	$637	$587	$1,235	$1,222
Adjusted EBITDA	25	(6)	16	(48)
Net income (loss)	(38)	(50)	(84)	(123)
Capital Expenditures	**$12**	**$7**	**$20**	**$16**

Highlights and Recent Developments

- Icahn Automotive is implementing a multi-year plan to separate its aftermarket parts and automotive services businesses into two separate operating companies. Our Automotive segment's priorities include:
  - Positioning the services business to take advantage of opportunities in the do-it-for-me market and vehicle fleets;
  - Optimizing the value of the commercial parts distribution business in certain high-volume core markets;
  - Exiting the automotive parts distribution business in certain low volume, non-core markets;
  - Improving inventory management across Icahn Automotive's parts and tire distribution network;
  - Investment in customer experience initiatives such as selective upgrades in facilities;
  - Investment in employees with focus on training and career development investments; and
  - Business process improvements, including investments in our supply chain and information technology capabilities.
- Q2 2021 Adjusted EBITDA was $25 million compared to $(6) million in Q2 2020.

8

182. Willetts assured investors that the Company had ample liquidity and ability to continue to grow, stating that IEP:

> . . . maintain[s] ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities. We ended Q2, '21 cash, cash equivalents, our investment in the Investment Funds, and revolver availability, totaling approximately $7.5 billion. Our subsidiaries have approximately $645 million of cash and $579 million of undrawn credit facilities to enable them to take advantage of attractive opportunities.
>
> In summary, ***we continue to focus on building asset value and maintaining ample liquidity*** to enable us to capitalize on opportunities within and outside our existing operating segments.

(Emphasis added)

183. Defendants Kekedjian and Willetts then opened the call to questions and Daniel Fannon of Jefferies asked specifically about the recovery of the auto segment:

> ***. . . as you think across your businesses and the environment where you highlighted certain like the Auto where you're seeing things improve. Is there portions of your business or as you look across that are still lagging***

> ***prepandemic*** that you are still waiting for kind of the -- a more return to normalcy or are taking longer than others? If you could just kind of dissect a bit the various segments that are maybe kind of returning faster versus others that might still be lagging behind?
>
> ARIS KEKEDJIAN: Yes. Well, look, I think ***for the most part, we're seeing pretty good rebound in our portfolio companies in terms of pre-pandemic level performance. In fact, in the Auto Services business, we're seeing the business perform at a pre-pandemic level. But one of the things we do see across the portfolio still is supply chain lags***. Either -- that, combined with some degree of inflation pressure that we see across the portfolio.

(Emphasis added)

184. During the question and answer portion of the Second Quarter 2021 conference call, Defendants Kekedjian and Willetts were also repeatedly asked about the Company's ability to fund its per unit distributions:

> OPERATOR: Our next question comes from the line of Chris Moral with Retail Investor.
>
> UNIDENTIFIED PARTICIPANT: So really 2 questions in and around the dividend. ***So can you just tell us how the dividend is funded through time? And then how do you want us to think about dividend sustainability? Are there economic -- is it economic sensitivities? Is it investment return sensitivities? Just give us a sense of kind of how you want us to think about that***.
>
> ARIS KEKEDJIAN: Well, we've got plenty of cash on the books, as you can imagine. So we're funding -- ***funding the dividend is not necessarily an issue for us whatsoever. We do like our current capital allocation policy. As you know, we just approved a $2 dividend for the quarter, which has been consistent with relatively past practices. And I think we intend on continuing that, at least at this point in time unless things change***.
>
> OPERATOR: Our next question comes from the line of Robert (inaudible) Investments.
>
> UNIDENTIFIED ANALYST: Yes, concerning that dividend. ***Carl Icahn owns most of the stock of the company, and you've given the option of taking stock instead of cash. So I don't think you would be paying out as much as $2 of every share that you have out. Is Carl Icahn in the past and as far as you know, taking stock instead of cash on the dividend?***

> ARIS KEKEDJIAN: Well, Carl Icahn has been consistently taking stock in lieu of cash with the exception of a particular quarter last year. So we, ***at this point in time, and as I indicated, to date, that's been his practice. And we intend -- we intend to believe that, that will be the practice going forward unless things change***.
>
> UNIDENTIFIED ANALYST: So his ownership of the company is being increased greatly. Every time there's 1 of these dividends paid out, the company is not paying out this tremendous dividend in cash. Is that a fair statement?
>
> ARIS KEKEDJIAN: I think your statement -- your question is whether or not his taking dividends, increases his ownership in the company. I think that's an accurate statement.
>
> ***
>
> UNIDENTIFIED ANALYST: . . . ***some people are starting to say that Carl Icahn is getting on and look at that dividend. I mean what do you have to say about that dividend when the stock is trading at $58 and paying an $8 dividend? There aren't too many companies doing something like that***.
>
> ARIS KEKEDJIAN: Well, ***we definitely have a high dividend yield and that's one of the factors that makes the stock attractive. So I think you're highlighting that fact.***
>
> UNIDENTIFIED ANALYST: Okay. What is that book value right now? And that's the last question I'll ask. Thank you for taking my questions. I appreciate it. But what is the book value of our company now? It's so hard to figure out. I mean carl Icahn is a fighter for stockholders, and we have stock in several hundred companies, and we have a lot of trouble trying to figure out what's going on in this company. So what is the book value of the company?
>
> ARIS KEKEDJIAN: The book value, and you'll see this today in the 10-Q is $3.7 billion.
>
> UNIDENTIFIED ANALYST: Divided by the shares, how much is that coming at $2 per share?
>
> ARIS KEKEDJIAN: Yes, I think you can do the math.

(Emphasis added)

185. On November 2, 2021, IEP issued a press release disclosing financial results for the fiscal quarter ending September 30, 2021 (the "Third Quarter 2021 Press Release"). The Third Quarter 2021 Press Release was also filed with the SEC as an exhibit to a Form 8-K. The Third Quarter 2021 Press Release highlighted the Company's $2.00 per

depositary unit distribution, stating that the IEP Board of Directors "***happily declared its 66th consecutive quarterly distribution,"*** (emphasis added) and disclosed various financial metrics, including:

> **Icahn Enterprises L.P. Reports Third Quarter 2021 Financial Results**
>
> - **Board approves quarterly distribution of $2.00 per depositary unit (the 66th consecutive quarterly distribution since 2005); IEP has increased the quarterly distribution over time and has not missed a quarterly distribution**
>
> ***
>
> **Sunny Isles Beach, Fla,** November 2, 2021 –
>
> Icahn Enterprises L.P. (Nasdaq: IEP) is reporting third quarter 2021 revenues of $2.6 billion and net loss attributable to Icahn Enterprises of $148 million, or a loss of $0.55 per depositary unit.
>
> ***
>
> Adjusted EBITDA attributable to Icahn Enterprises was $88 million for the three months ended September 30, 2021, compared to $(550) million for the three months ended September 30, 2020.
>
> ***
>
> As of September 30, 2021, our estimate of indicative net asset value was $5.4 billion, compared to $3.6 billion as of December 31, 2020, an increase of $1.8 billion. This was due in part to a change in how we estimate the fair value of our Automotive segment's owned real estate value to reflect the improvement of its real estate leasing operations. We believe this better reflects the estimated fair value of this segment's assets. Additionally, the change in our estimate of indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries which are not included in our GAAP assets. For additional information, refer to "Use of Indicative Net Asset Value Data" below.
>
> ***
>
> ***On November 1, 2021, the Board of Directors of the general partner of Icahn Enterprises happily declared its 66th consecutive quarterly distribution since 2005, in the amount of $2.00 per depositary unit***, which will be paid on or about December 22, 2021 to depositary unitholders of record at the close of business on November 16, 2021.

(Emphasis added)

186. On November 2, 2021, following the release of the Third Quarter 2021 Earnings Press Release, the Company held a conference call, hosted by Defendants Kekedjian and Willetts, to discuss the results for the third quarter of 2021. Defendant Kekedjian discussed the Company's "healthy annual yield of almost 14%." Kekedjian noted that "on October 27, IEP officially launched a tender offer to acquire 100% of the shares of Southwest Gas Holdings for $75 a share." Kekedjian then used the tender offer to remind investors of IEPS' long history of consistent distributions as being:

> ***. . . reflective of a long and successful track record of activism at IEP, which has contributed to the long-term performance of our depositary units. We have the capital flexibility and brand recognition to maximize the activist strategy. This track record has allowed IEP to pay 66 consecutive distributions to its unitholders since 2005 while increasing the distribution over time. On November 1, 2021, the IEP Board declared a $2 quarterly distribution payable in cash or additional units. This represents a healthy annual yield of almost 14%.***

(Emphasis added)

187. Kekedjian continued by noting that "[t]oday, IEP is one of the last activists because barriers to entry to this lucrative area are extremely high. This is due to the fact that money in most activist hedge funds is not permanent. Often, it would be activist hedge funds money will be withdrawn by an investor at the very time it is most needed in an activist campaign. This can be extremely costly, if not fatal." Kekedjian's comment highlighted the Company's awareness that the continued support of its retail investors was critical to its survival and amounted to a "pep talk," encouraging investors to stay in and continue to benefit from the Company's generous distributions. Kekedjian also spoke to the significance of the Icahn "brand":

> ***Another advantage IEP has is its brand name. Target companies understand that we are not going away and we'll not relent.*** As it was said in the Art of War, the best way to win a war is not having to fight it. We, much more often than not, get invited to be on Boards without having a fight. Interestingly, our presence on these Boards have often provide -- proved to be successful, not only for IEP, but for all shareholders. Other would-be

> activists must prove their mettle before their targets make peace. This can be extremely expensive for those who first enter this arena.

(Emphasis added).

Kekedjian added that "[a]ctivism is still the best paradigm for investing."

188. After this pep talk, Kekedjian then turned to results for the quarter. First touting the increased NAV, followed by discussion of the Automotive segment and then liquidity.

> . . . [f]or the 9 months ended September 30, 2021, indicative net asset value increased by $1.8 billion to $5.4 billion compared to $3.6 billion as of December 31, 2020. Drivers include the performance of our investment funds, market value of our energy positions in CVR and Delek, the sale of PSC Metals and the improvement of our own real estate operations within Icahn Automotive Group. ***As a reminder, the company uses indicative net asset value as an additional method for considering the value of the company's assets, and we believe that this information is more indicative of value than GAAP***."
>
> ***
>
> Our Auto segment has improved adjusted EBITDA by $72 million on a year-to-date basis versus 2020. Our services team continues to outperform and is improving customer margins and core operational performance. ***The parts business is in its early stages of executing a comprehensive set of productivity initiatives. As part of our transformation efforts, the Icahn Automotive Group team has aggressively eased out underutilized real estate locations and has over 131 new lease contracts signed or in advanced negotiations***.
>
> Our Auto Services business competes in a fragmented industry with annual revenues of $246 billion. Over 50% of the industry is made up of smaller chains and independent operators. ***We believe this industry is ripe for consolidation, and we are well positioned to actively participate as a buyer or a seller.***
>
> ***The age of the car part, increasing vehicle complexity and high barriers to entry provide the optimal opportunity for the Auto Services business to leverage its large national footprint of over 1,000 company-operated locations in over 800 franchisees.*** Our historic brands, strong balance sheet and leading position with fleet operators gives us a strong competitive advantage to win in the marketplace. In addition, many of our locations provide the flexibility to offer dedicated base for electric vehicle services giving us an early-mover advantage in this rapidly growing market.

***

> ***Finally, IEP closed the quarter with holding company cash and investments in the funds of $5.9 billion, providing us with significant strategic flexibility***.

(Emphasis added)

189. Following his remarks, Defendant Kekedjian introduced Defendant Willetts, who presented detailed financials and segmental results, referring to the powerpoint presentation issued by the Company in concert with the conference call. Willetts spoke extensively about the Company's focus on its Automotive segment:

> Now turning to our Automotive segment. The Automotive segment's Q3 '21 adjusted EBITDA was $14 million compared to $6 million in the prior year period. ***Performance has been driven by our services BU, which is experiencing performance gains due to improved operations and gross margins over prior year***.
>
> ***Our Parts business remains a focus of improvement efforts. Core gross margin performance is improving due to pricing and customer profitability management. Operational efficiencies remain a large opportunity and a key focus area*** but are not yet reflected in the Q3 results.
>
> ***We are beginning to see the results of a multi-quarter effort to improve the returns on owned real estate in IAG through an aggressive program to re-lease underutilized space***. The team has successfully negotiated over 104 leases this year with benefits starting to -- in Q3 and ramping up through 2022 and 2024.

(Emphasis added)

190. Willetts concluded with a discussion of IEP's liquidity, assuring investors that "[w]e maintain ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities. We ended Q3 '21 cash, cash equivalents and our investment in the investment funds and revolver availability totaling $7.1 billion. Our subsidiaries have approximately $688 million of cash and $43 million of undrawn credit facilities to enable them to take advantage of attractive opportunities." Finally, Willetts assured investors and the public that "we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside our existing operating segments."

191. When the call was opened up for questions, participants honed in on the Automotive segment. Daniel Thomas Fannon of Jefferies, LLC asked, among other things, about the Company's Automotive segment:

> DANIEL THOMAS FANNON: Okay. And then just on the Auto segment and the real estate optimization, thanks for the stats around the leases that have been signed. But any update or what's left in terms of what is still vacant or how much progress has been made in terms of -- what was the peak in terms of vacancies versus kind of where you sit? And as I said, what's kind of left to still potentially rent out?
>
> DAVID WILLETTS: Sure. So when we take a look at the -- there's approximately 216 properties that we own that we've been focusing on throughout really 2020 and 2021. When we take a look at what's left right now in terms of vacant properties or properties that are undervalued and we're actively seeking to release, it's about 56. So 56 versus the 216, we're -- ***cross your fingers, we're getting close to the end of the line. Although the last ones are always the toughest ones to actually get leased out***.

(Emphasis added)

192. Andrew Berg of Post Advisory Group, LLC then asked for more detail on the Company's changed valuation of its automotive segment:

> ANDREW BERG: Okay. And ***with the change in the approach on Automotive, can you just give us a better sense of how each of those valuations were determined***? ***I'm assuming you probably were taking a multiple for the services and the parts business, but then the -- on the Real Estate, just help us get a better understanding of how you came up with that point as well***?
>
> DAVID WILLETTS: Sure. And you're referring to the net asset value?
>
> ANDREW BERG: Yes, the net asset value, as you guys reported, since you broke it out into 3 pieces.
>
> DAVID WILLETTS: Yes. ***Services and the parts group have been valued at a book value basis. Certainly, if those mature and get closer to some form of transaction, we might reevaluate how we're doing that. But the real estate portfolio is evaluated, frankly, much more on a real estate appropriate method, looking at discounted cash flows, fair market values on a property-by property basis and cap rates***. All of the details are spelled out in a fairly lengthy footnote in the earnings release. But the only thing that was valued differently was the real estate, given the substantial change, and that's done on the real estate logic.

ANDREW BERG: Okay. And you said you had 56 properties remaining out of 200 and how many?

DAVID WILLETTS: 216.

(Emphasis added)

193. To accompany the earnings conference call, the Company released a presentation highlighting its third quarter 2021 results (the "Third Quarter 2021 Presentation"). While the Third Quarter 2021 Presentation noted that investment fund performance was down in the third quarter of 2021, it highlighted an increase in NAV to $5.4 billion, up $1.8 billion year to date, highlighted the Company's $2.00 per depositary unit distribution for the quarter and noted that "[o]ur efforts to enhance returns on real-estate assets embedded in IAG continue to bear fruit."

194. In addition to including indicative net asset values and EBIDTA information, the Third Quarter 2021 Presentation also included a detailed description of the status of the each of the Company's segments, including the Automotive Segment:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary, Icahn Automotive Group LLC ("Icahn Automotive").
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers.
- Our Automotive segment also includes our investment in 767 Auto Leasing LLC.

Highlights and Recent Developments

- Overall Q3 2021 Adjusted EBITDA was $14 million compared to $6 million in Q3 2020
- Automotive Services continues to show strong year-over-year revenue growth Q3 YTD of 12%
- Aftermarket Parts business continues to see gross margin improvements as the management team is executing a focused improvement plan
- Vendors for both businesses continue to experience supply chain challenges and cost increases – which are hampering revenue growth
- Management is actively securing tenants for underutilized owned and ground-leased assets. Over 131 properties have signed leases with start dates in 2021-2023

Summary Segment Financial Results

Automotive Segment	Three Months Ended September 30,		Nine Months Ended September 30,	
($Millions)	2021	2020	2021	2020
Selected Income Statement Data:				
Net sales and other revenue from operations	$591	$660	$1,826	$1,882
Adjusted EBITDA[(1)]	14	6	30	(42)
Net income (loss)	(55)	(26)	(139)	(149)
Capital Expenditures	$13	$9	$33	$25

(1) Refer to the Adjusted EBITDA reconciliations in the Appendix.

8

195. Later on November 2, 2021, following the earnings conference call, the Company filed a Form-10-Q for the period ending September 30, 2021 with the SEC.

Jefferies is Convinced of Dividends "In Perpetuity"

196. Icahn (and IEP), and sell-side analyst and securities firm Jefferies, a market maker in IEP unit trading, and an underwriter with respect to its several secondary offerings, enjoyed a close symbiotic relationship. IEP and the Individual Defendants deftly took advantage of Icahn's decades long relationship with the Jefferies firm, which handled secondary unit offerings to the market as an underwriter and market maker, helping IEP secure cash infusions in excess of over $1.5 billion from investors purchasing IEP units in a series of secondary offerings during the Class Period, filling IEP's coffers.

197. To that end, Jefferies consistently issued positive report after positive report with "Buy" ratings and "long view" assumptions of a constant $2 per quarter dividends, ($8 annualized) "in perpetuity" from no later than November 9, 2021 until at least February 28, 2023, in its modeling of "base", "upside" and "downside" case scenarios, after participating in quarterly conference calls with IEP management. Not once during this time period did Icahn, or any Individual Defendant with whom Jefferies analysts conferred, ever correct Jefferies modeling assumptions stated in its reports, especially respecting dividends. Whether or not Jefferies was a witting or unwitting agent on behalf of the IEP Defendants effectively helping them disseminate the false "dividend" picture, or Jefferies was evincing and reflecting their success in deceiving the market with regard to IEP's ongoing dividend profile, Jefferies' analyst reports reflected the impression and picture that Defendants actions, statements and conduct created in the market, even in the face of inconsistent financial results. In that regard, the aforesaid Jefferies reports demonstrate, at a minimum, that the market -or even an experienced analyst such as the Jefferies analyst – was persuaded to see a false picture of IEP, especially with respect to quarterly dividends, unable to connect the dots as a consequence of the Defendants' confounding statements,

deception, and lack of transparency.

Another Management Shake-Up

198. On November 8, 2021, less than a week after the third quarter 2021 earnings release, the Company filed a Form 8-K with the SEC and issued a press release announcing another management shakeup at IEP. The Company announced that Defendant Willetts had been appointed CEO of IEP, Icahn Enterprises Holdings L.P., and Icahn Enterprises G.P. Inc., effective immediately. The Company further announced that Defendant Ted Papapostolou, who had previously served as IEP's chief accounting officer and had been with the Company since 2007, had been appointed CFO. Defendant Willet's replacement of Defendant Kekedjian, who had held the post for just seven months, was attributed by the Company to "certain personal family issues that make it impossible for him to continue his permanent relocation in Florida." The Company further claimed that "Mr. Kekedjian's resignation was not the result of any disagreement with Icahn Enterprises."

199. On or about December 3, 2021, IEP offered 14.62 million units for sale to the public at or about $51.85 per unit, for proceeds of $759 million.

200. Icahn Enterprises issued a press release on February 25, 2022, titled "Icahn Enterprises L.P Reports Fourth Quarter and Full Year 2021 Financial Results" ("Fourth Quarter 2021 Press Release"). Therein, IEP reported, among other things, that for the year ended December 31, 2021, revenues were $11.3 billion and net loss attributable to Icahn Enterprises was $518 million, or $2.32 per depositary share. The press release explained:

> The full-year 2021 results were negatively impacted by losses of $1.3 billion on IEP's Investment segment short positions (used to hedge our long positions). Other losses included $435 million in RINs expense and $205 million of Automotive transformation losses and inventory write-downs.

201. Additionally, the press release stated that for the year ended December

31, 2021"indicative net asset value increased by $1.6 billion to $5.1 billion" and that:

> The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries which are not included in our GAAP earnings reported above. In addition, in the third and fourth quarters of 2021, we revised how we estimate the fair value of our Automotive segment's owned real estate to reflect the improvement of its real estate leasing operations and its Services business to reflect current market multiples which better reflects the fair value of the assets, both of which contributed to the positive change in indicative net asset value.

202. The press release also highlighted a quarterly distribution of $2.00 per depositary share had been awarded by the IEP Board.

203. On February 25, 2022, the Company also held a conference call, hosted by Defendants Willetts and Papapostolou, to present and discuss the results for the fourth quarter and fiscal year 2021. During the February 22, 2022 conference call, Defendant Willetts discussed the Company's results, focusing heavily on the Company's increase in the net asset value of the Automotive segment while acknowledging the continued poor performance of the Investment segment stating, among other things:

> 2021 earnings ended with a net loss for IEP of $518 million for the year and with a $396 million loss for the quarter, which is significantly improved versus 2020. IEP's full year adjusted EBITDA was a positive $273 million. The full year '21 results were negatively impacted by losses of about $1.3 billion on IEP's Investment segment, short position, which are used to hedge our long positions.
>
> ***
>
> ***Indicative net asset value increased by $1.6 billion in 2021 to $5.1 billion, despite the headwinds I just mentioned. The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries, which are not included in our GAAP earnings. In 2021, we revised how we estimate the fair value of our Automotive segment's owned Real Estate and its services business, which better reflects the fair value of these assets, which also contributed to a positive change***.
>
> ***
>
> ***We are seeing strong and continued market interest in our portfolio of vacant former parts retail locations. We closed the quarter with cash and***

> ***investments in the funds of approximately $6 billion. The Board declared a $2 quarterly distribution payable in cash or additional units***.

(Emphasis added)

204. Following the commentary by Defendant Willetts, Defendant Papapostolou spoke to "highlight the performance of our operating segments and comment on the strength of our balance sheet," and focusing on the Automotive segment, acknowledging a "***$56 million of inventory write-downs within our Automotive segment***," while providing color on the continued transformation plan:

> Now turning to our Automotive segment. ***Q4 2021 net sales and service revenues for IAG was $558 million, a decrease of $38 million from the prior year period***. ***Store closures related to the transformation plan contributed to a decrease of $76 million in the parts business, partially offset by a $38 million improvement in the services business. Q4 2021 adjusted EBITDA was a loss of $97 million, which includes a $56 million inventory write-down***. Adjusted EBITDA excludes transformation losses associated with closed and closing stores, which were $34 million for Q4 2021. The services business continues to perform well, with revenues up 12% in Q4 2021 as compared to the prior year period.

(Emphasis added)

205. Defendant Papapostolou finished his comments with a discussion of IEP's liquidity, assuring investors and the public that "[w]e maintain ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities," and noting that "we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside our existing operating segments."

206. With that, Defendants Willetts and Papapostolou opened the conference call to questions which came only from Chapin Mechem of Northeast Investors Trust, who focused his questions on Viskase:

> I think Viskase fans talked about how they've increased their capacity a little bit and increased their market share. And I just wondered if there's any – if you guys are seeing anything from that, if there's any impact on volumes or if that has any negative impacts on your ability to increase your prices, which it sounds like maybe it doesn't. But any thoughts on that?

Willetts responded, stating that:

> Rear-world looking, we don't see any issues from Viskase impacting us in a material way. We're refocusing on what we're producing and what we're providing to the customers. Candidly, one of the larger challenges, just getting the raw materials in. So there's a bit of a shortage in terms of raw materials that is constraining capacity, even if there's enough line time. So I think that, that probably is ameliorating any issues on the Viskase fan. But we haven't seen anything from Viskase fan itself. So it's – right now, ***that is not a major risk factor that we're focused on or we're seeing for our pricing***.

(Emphasis added)

207. In the Earnings Presentation released by the Company in conjunction with the Fourth Quarter 2021 conference call, even while acknowledging a net loss of $396 million for the fourth quarter and a full year net loss of $518 million, the Company highlighted a $1.6 billion increase in NAV, driven by the Company's decision to change the valuation of its Automotive Segment assets. "[D]espite the headwinds mentioned above. The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries which are not included in our GAAP earnings reported above. In 2021, we revised how we estimate the fair value of our Automotive segment's owned real estate and its Services business which better reflects the fair value of the assets, which also contributed to the positive change." The Company also highlighted the IEP Board's approval of a quarterly distribution of $2.00 per depositary unit, noting that "[d]uring the year ended December 31, 2021, we declared four quarterly distributions aggregating $8.00 per depositary unit."

208. The presentation included, *inter alia*, the Company's net asset valuation,

summary financial information, adjusted EBITDA, and breakdowns of Company financials by segment, including the Automotive Segment:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary, Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers

Summary Segment Financial Results

Automotive Segment	Three Months Ended December 31,		Year Ended December 31,	
($Millions)	2021	2020	2021	2020
Selected Income Statement Data:				
Net sales and other revenue from operations	$558	$596	$2,384	$2,478
Adjusted EBITDA[1]	(97)	(3)	(67)	(45)
Net income (loss)	(121)	(49)	(260)	(198)
Capital Expenditures	**$15**	**$10**	**$48**	**$35**

Highlights and Recent Developments

- **Icahn Automotive**
  - Adjusted EBITDA was negative $97 million for Q4 2021 versus negative $3 million for Q4 2020
  - Q4 2021 transformation losses of $34 million and inventory write-down of $56 million
- **Automotive Services**
  - Q4 2021 revenues increased by 12% compared to the respective same fiscal periods in prior year
  - Management prioritized sourcing initiatives and continued to complete purchase contracts with key vendors
  - Management is actively securing external tenants for underutilized owned and ground-leased assets.
- **Automotive Parts**
  - Signed contracts with Amazon and Walmart to grow Ecommerce sales during 2021
  - Management continues to see gross margin improvements due to increased pricing
  - Operational restructuring focused on consolidating our DC footprint and rebalancing our inventory

(1) Refer to the Adjusted EBITDA reconciliations in the Appendix.

7

209. A Form 10-K for the period ending December 31, 2021 (the "2021 Form 10-K"), filed by the Company with the SEC and executed by Defendants Icahn, Willetts, and Papapostolou, included a footnote referring, in passing, to Icahn's use of certain IEP units to "secure certain personal indebtedness":

> The number of depositary units pledged to secure these loans fluctuates in certain years and from time to time as a result of changes in the amount of outstanding principal amount of the loans, the market price of the depositary units, and other factors. Mr. Icahn has advised that he and his affiliates have sufficient additional assets to satisfy any obligations pursuant to these loans without recourse to the depositary units, he has no need or intention to allow foreclosure on such collateral, and that he is current on all principal and interest payments with respect to the loans, and there has never been an event of default or a default under any of the loans.

Despite disclosing the existence of this indebtedness, at no point did Defendants acknowledge or disclose the substantial risk to shareholders of a margin call, or that Defendants were engaging in the dividend inducement scheme for the purpose of artificially inflating the trading price of IEP units to forestall or prevent such a margin call.

210. The disclosures made by IEP and the individual defendants during the fiscal year ending December 31, 2021**,** were untrue because they:

a. Concealed from the market Defendants' ***dividend inducement scheme*** by which IEP and the Individual Defendants used heightened dividend yields as an inducement to buoy or inflate the trading price of IEP units and insulate Mr. Icahn from a massive margin call on his personal margin loan, as more fully discussed below, as deceived investors clamored to invest in a so-called "dividend stock," ostensibly offering increased asset values;

b. Concealed from the market that the loan-to-value ratios in Mr. Icahn's debt covenants tethered to IEP's unit trading price created a significant and ***material undisclosed risk of a margin call*** on Mr. Icahn's personal loans;

c. ***Reported indicative net asset values were substantially inflated***, due to a combination of overly aggressive marks on IEP's investments and continued year to date underperformance in operating assets. Unlike GAAP NAV, "indicative" NAV depends upon the chosen valuation methodology one applies, as well as the assumptions regarding the inputs to the valuation calculations. IEP's indicative NAV, at all times, well exceeded its GAAP NAV, as shown in the table below at ¶ 308;

d. Concealed and failed to disclose that de-linking Mr. Icahn's loan covenant LTV ratios from IEP's unit trading price would ***adversely impact the Company's distribution of dividends***; and

e. *See also,* the subpart below entitled Additional Bases for Falsity of Defendants' Statements.

Statements Regarding 2022 Financial Results

211. On May 6, 2022, the Company filed a Form 8-K with the SEC, attaching a press release titled "Icahn Enterprises L.P. Reports First Quarter 2022 Financial Results" (the First Quarter 2022 Press Release") stating, among other things:

- **IEP reports first quarter net income attributable to IEP of $323 million and Adjusted EBITDA attributable to IEP of $616 million. This represents an improvement of $161 of net income attributable to IEP and $181 of Adjusted EBITDA attributable to IEP compared to Q1 2021.**

- **Indicative Net Asset Value increased by $1.1 billion as of March 31, 2022 compared to December 31, 2021. The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries which are not included in our GAAP earnings.**

- **Board approves quarterly distribution of $2.00 per depositary unit (the 68th consecutive quarterly distribution since 2005)**

Sunny Isles Beach, Fla, May 6, 2022 **--** Icahn Enterprises L.P. (Nasdaq:IEP) is reporting first quarter 2022 revenues of $4.1 billion and net income attributable to Icahn Enterprises of $323 million, or $1.06 per depositary unit.

***

For the three months ended March 31, 2022, Adjusted EBITDA attributable to Icahn Enterprises was $616 million compared to $435 million for the three months ended March 31, 2021.

Indicative Net Asset Value increased by $1.1 billion as of March 31, 2022 compared to December 31, 2021. The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries which are not included in our GAAP earnings reported above.

On May 4, 2022, the Board of Directors of the general partner of Icahn Enterprises declared a quarterly distribution in the amount of $2.00 per depositary unit, which will be paid on or about June 29, 2022, to depositary unitholders of record at the close of business on May 20, 2022.

212. On May 6, 2022, the Company also held a conference call, hosted by Defendants Willetts and Papapostolou, to present and discuss the results for the first quarter

of 2022. As to the Company's Automotive segment, Willetts stated:

> ***Automotive Services continued its strong upward trajectory, and the team is executing the multiyear improvement plan.*** Services is in a strong position given the increasing age of the car park and is benefiting from the growing number of vehicles older than 3 years on the road today. Parts business continues to stabilize and actively working down excess inventory.
>
> ***We closed the quarter with cash and investments in the funds of approximately $6 billion. We paid down $500 million of debt***, resulting in interest expense savings of $34 million on an annual basis. The Board declared a $2 quarterly distribution payable in cash for additional units.

(Emphasis added)

213. Willetts then turned the call over to Defendant Papapostolou who sought to "highlight the performance of our operating segments and comment on the strength of our balance sheet." Defendant Papapostolou then provided summaries of the performance of the various segments, including the Automotive and Food Packaging segments:

> Now to our Automotive segment. Q1 '22 net sales and service revenues for the Automotive segment were $554 million, a decrease of $44 million from the prior year quarter. ***Store closures relating to the transformation plan accounted for a decrease of $77 million***. On an organic basis, service revenue was up $26 million and aftermarket parts sales were up [$7 million].

(Emphasis added)

214. Defendant Papapostolou then summarized the Company's liquidity position, assuring investors that "[w]e maintain ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities" and reasserting that "we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside our existing operating segments."

215. To accompany the earnings conference call, the Company released a slide presentation highlighting its first quarter 2022 results (the "First Quarter 2022

Presentation"). The First Quarter 2022 Presentation highlighted a $1.1 billion increase in NAV, the repayment of the $500 million aggregate principal amount of the 6.75% senior unsecured notes due 2024, and the Board's declaration of a $2.00 per depositary unit distribution.

216. In addition to provide financial summaries and EBITDA presentations, the First Quarter 2022 Presentation also included segment summaries for, *inter alia*, the automotive and the food packaging segments.

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary, Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers

Summary Segment Financial Results

Automotive Segment	Three Months Ended March 31,	
($Millions)	2022	2021
Selected Income Statement Data:		
Net sales and other revenue from operations	$554	$598
Adjusted EBITDA[1]	(2)	(9)
Net income (loss)	(28)	(46)
Capital Expenditures	**$21**	**$8**

Highlights and Recent Developments

- **Automotive Segment**
  - Adjusted EBITDA loss was $2 million for Q1 2022 compared to $9 million for Q1 2021
- **Automotive Services**
  - Q1 2022 revenues increased by 8% compared to the respective same fiscal periods in prior year. Continued strong performance with fleet customer growth
  - Management is actively securing external tenants for underutilized locations
- **Automotive Parts**
  - Q1 2022 revenues decreased by $70 million compared to Q1 2021 mainly due to store closures as part of the transformation plan
  - Management continues to focus on consolidating its DC footprint, growing e-commerce and rebalancing its inventory

(1) Refer to the Adjusted EBITDA reconciliations in the Appendix.

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Segment: Food Packaging

Segment Description

- Viskase Companies, Inc (OTCPK:VKSC) is a worldwide leader in the production and sale of cellulosic, fibrous and plastic casings for the processed meat and poultry industry
- Leading worldwide manufacturer of non-edible cellulosic casings for small-diameter meats (hot dogs and sausages)
- Leading manufacturer of non-edible fibrous casings for large-diameter meats (sausages, salami, hams and deli meats)

Highlights and Recent Developments

- Q1 2022 net sales and Adjusted EBTIDA were flat compared to Q1 2021
- Viskase has focused on pricing initiatives to counter supply chain disruptions and raw material price inflation

Summary Segment Financial Results

Food Packaging Segment	Three Months Ended March 31,	
($ Millions)	2022	2021
Selected Income Statement Data:		
Net sales	$101	$101
Adjusted EBITDA[1]	15	15
Net income (loss)	6	(1)
Adjusted EBITDA attributable to IEP[1]	$13	$13
Net income (loss) attributable to IEP	$5	($1)
Capital Expenditures	**$4**	**$2**

(1) Refer to the Adjusted EBITDA reconciliations in the Appendix.

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217. On August 4, 2022, the Company issued a press release titled "Icahn Enterprises L.P. Reports Second Quarter 2022 Financial Results" (the Second Quarter 2022 Press Release). Therein, the Company, in relevant part, stated:

- **For the six months ended June 30, 2022, net income attributable to Icahn Enterprises was $195 million, or $0.64 per depositary unit.**

***

- **For the six months ended June 30, 2022, Adjusted EBITDA attributable to Icahn Enterprises was $742 million compared to $627 million for the six months ended June 30, 2021**

- **Second quarter net loss attributable to IEP was $128 million with Adjusted EBITDA attributable to IEP of $126 million. This represents an improvement of $8 million of net loss attributable to IEP and a decrease of $66 million of Adjusted EBITDA attributable to IEP compared to Q2 2021**

- **Indicative Net Asset Value increased to $6.6 billion as of June 30, 2022, an increase of $1.5 billion compared to December 31, 2021. The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries which are not included in our GAAP earnings**

- **Board approves quarterly distribution of $2.00 per depositary unit (the 69th consecutive quarterly distribution since 2005)**

> **Sunny Isles Beach, Fla,** August 4, 2022 - Icahn Enterprises L.P. (Nasdaq:IEP) believes activism is the best paradigm for investing. We are putting our activist principles into effect at our majority-controlled companies as well as the minority positions held in our investment segment, and currently have representatives on fourteen public company boards. Additionally, we believe strongly in hedging our positions to mitigate risk, especially in markets that we are living in today.
>
> Icahn Enterprises L.P. is reporting revenues of $7.6 billion and net income attributable to Icahn Enterprises of $195 million, or $0.64 per depositary unit, for the six months ended June 30, 2022.

218. The Second Quarter 2022 Press Release also included a statement of NAV, asserting that, of the Company's NAV of $6.579 billion, $851 million was attributed to Automotive Services, $479 was attributed to Automotive Parts, and $1,187 billion was attributed to Automotive Owned Real Estate Assets.

219. In an August 5, 2022 conference call hosted by Defendants Willetts and Papapostolou, Willetts gave a summary of the results of the second quarter of 2022, emphasizing the performance of the Automotive Segment:

> Our Automotive segment ***continues to execute the transformation plan*** and is seeing improvements in the services shop margins and is ***seeing a reduction in overall losses within the parts business***. We closed the quarter overall with cash and investments in the funds of approximately $5.9 billion. The Board declared a $2 per unit quarterly distribution payable in cash for additional units. (Emphasis added.)

220. Defendant Willetts then turned the call over to Defendant Papapostolou who summarized the results for the quarter that provided a detailed breakdown of segmental results, including the Automotive segment:

> And now on to our Automotive segment. Q2 '22 net sales and service revenues for the Automotive segment were $621 million, a decrease of $16 million from the prior year quarter. Q2 '22 Automotive service revenue increased by $34 million, in part due to the growth in its fleet business. Aftermarket parts sales decreased by $63 million, mainly due to store closures as part of the transformation plan. Q2 '22 adjusted EBITDA was $13 million compared to $25 million in Q2 '21.

221. Papapostolou concluded by assuring investors that "we continue to focus on building asset value and maintaining ample liquidity to enable us to capitalize on opportunities within and outside our existing operating segments."

222. To accompany the earnings conference call, the Company released a presentation highlighting its second quarter 2022 results (the "Second Quarter 2022 Presentation"). The Second Quarter 2022 Presentation highlighted an increase in NAV, stating that net asset value was "up $1.5 billion from the ending figures of December 2021." The Second Quarter 2022 Presentation also highlighted that the "Board declared a $2 per unit quarterly distribution[.]"

223. In addition to providing summary financial information regarding financial performance, the Second Quarter 2022 Presentation also included the Company's calculations of net asset value and summaries of segmental performance, including the Automotive Segment:

Segment: Automotive

Segment Description

- We conduct our Automotive segment through our wholly owned subsidiary, Icahn Automotive Group LLC ("Icahn Automotive")
- Icahn Automotive is engaged in the retail and wholesale distribution of automotive parts in the aftermarket as well as providing automotive repair and maintenance services to its customers

Summary Segment Financial Results

Automotive Segment	Three Months Ended June 30,		Six Months Ended June 30,	
($Millions)	2022	2021	2022	2021
Selected Income Statement Data:				
Net sales and other revenue from operations	$630	$637	$1,184	$1,235
Adjusted EBITDA(1)	13	25	11	16
Net income (loss)	(15)	(38)	(43)	(84)
Adjusted EBITDA attributable to IEP	13	25	11	16
Net income (loss) attributable to IEP	(15)	(38)	(43)	(84)
Capital Expenditures	**$30**	**$12**	**$51**	**$20**

Highlights and Recent Developments

- **Automotive Segment**
  - Adjusted EBITDA was $13 million for Q2 2022 compared to $25 million for Q2 2021
- **Automotive Services**
  - Q2 2022 revenues increased by $44 million compared to Q2 2021
- **Aftermarket Parts Sales**
  - Q2 2022 revenues decreased by $73 million compared to Q2 2021 mainly due to store closures as part of the transformation plan
  - Management continues to focus on consolidating its Distribution Center footprint, growing e-commerce and rebalancing its inventory

(1) Refer to the Non-GAAP Reconciliations in the Appendix.

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224. On November 3, 2022, IEP issued a press release titled "Icahn Enterprises

L.P Reports Third Quarter 2022 Financial Results (the "Third Quarter 2022 Press Release"), which it also filed with the SEC as an attachment to a Form 8-k.

225. In the Third Quarter 2022 Press Release, the Company highlighted several items, including net income, EBITDA, NAV, and it's "70th consecutive quarterly distribution since 2005" stating, among other things:

- **For the nine months ended September 30, 2022, net income attributable to Icahn Enterprises was $72 million, or $0.23 per depositary unit. For the nine months ended September 30, 2021, net loss attributable to Icahn Enterprises was $122 million, or a loss of $0.47 per depositary unit. Adjusted EBITDA attributable to Icahn Enterprises was $812 million compared to $715 million for the nine months ended September 30, 2021**
- **Third quarter net loss attributable to IEP was $123 million with Adjusted EBITDA attributable to IEP of $70 million. This represents an improvement of $25 million of net loss attributable to IEP and a decrease of $18 million of Adjusted EBITDA attributable to IEP compared to Q3 2021**
- **Indicative Net Asset Value increased by $1.0 billion to $6.2 billion as of September 30, 2022 compared to December 31, 2021. The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries which are not included in our GAAP earnings**
- **Board approves quarterly distribution of $2.00 per depositary unit (the 70th consecutive quarterly distribution since 2005)**

226. In addition, the Third Quarter 2022 Press Release included a detailed breakdown of IEP's Indicative Net Asset Value, which it reported as being $6.160 billion, a figure that included a total of $2.322 billion attributed to the Icahn Automotive Group, including $645 million in Automotive Services, $490 million in Automotive Parts, and $1.187 billion in Automotive Owned Real Estate Assets.

227. On November 4, 2022, following the issuance of the Third Quarter 2022 Press Release, IEP held a conference call with investors and analysts, hosted by Defendants Willetts and Papapostolou, Willetts summarized quarterly results, noting that, *inter alia*, "indicative net asset value as of quarter end increased by $1 billion to $6.2 billion as

compared to December 31, 2021. The change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries, which are not included in our GAAP earnings reported above." Willetts further acknowledged "upgrading select management teams," including the replacement of Viskase's CEO and "[a]t Pep Boys, we're in the process of replacing the CEO and looking to upgrade other members of the senior management." After noting the declaration of a $2 quarterly distribution, Willetts turned the call over to Defendant Papapostolou.

228. Papapostolou began by "reviewing our consolidated results and then highlight the performance of our operating segments and comment on the strength of our balance sheet. For Q3 '22, we had net loss of $123 million and adjusted EBITDA of $70 million compared to a net loss of $148 million and adjusted EBITDA of $88 million in the prior year period." Thereafter, he discussed the Company's individual segments, reporting, as to the Automotive segment, stating:

> Q3 '22 net sales and service revenues for the Automotive segment were $625 million, an increase of $31 million from the prior year quarter. Q3 adjusted EBITDA was $1 million compared to $14 million in the prior year quarter. Q3 '22 automotive service revenue increased by $55 million as compared to the prior year period, mainly due to volume and price increases.
>
> During the quarter, the service business was negatively impacted by unfavorable product mix and several nonrecurring SG&A items. Aftermarket parts sales decreased by $34 million, mainly due to store closures as part of the transformation plan.

229. Papapostolou concluded with a discussion of liquidity, contending that:

> We maintain liquidity at the holding company and each of our operating subsidiaries to take advantage of attractive opportunities. We ended the quarter with cash, cash equivalents, our investment in the investment funds and revolver availability totaling approximately $7.1 billion. Our subsidiaries have approximately $761 million of cash and $291 million of undrawn credit facilities to enable them to take advantage of attractive opportunities.

230. The question and answer portion of the Third Quarter 2022 Conference Call began with a question from Daniel Fannon of Jefferies LLC regarding the Automotive

segment:

> Just wanted to talk about the Auto segment and just the outlook as you think about both growth and profitability. Obviously, the store closures have been planned. Those are kind of flowing through, but just other aspects of the business, other kind of cost- cutting measures or other things you're doing to kind of think about profitability and the outlook for that business kind of in the intermediate term?

231. Defendant Williams responded with a lengthy discourse:

> Dan, it's a good question. Let's decompose auto a little bit. And I'll talk about the Services segment, principally in responding. So I think there are 3 things we should touch on. The first is what does the top line look like? And what do the macros look like for the business over the next few quarters, potentially going into a recessionary environment.
>
> I think the first macro is generally recessions are good for the service business as folks delay capital purchases for cars, and that means they're running their existing cars or existing fleets, which have a higher maintenance component to them. So generally heading into a down market in the services business is not necessarily bad. That said, the second piece is, what does that mean with regards to ticket price? Folks are going to be pretty mindful about only buying what they need to buy.
>
> And I think when we take a look at this year, you've had some pretty substantial revenue growth much of which has been driven through price as we have successfully passed through the cost increases that have come from suppliers and from our labor force as well as pricing our services to what we think is a market appropriate return. That's the area where I see some potential pressure.
>
> And to your point, the third bucket is, how do we get more efficient. And when I look at services, there are really 2 components. Are we as lean as we can be with our SG&A in our back office? The answer is no. We are currently in the process of doing 2 things. One is a -- just a resizing of the overall headcount levels as well as cost levels. The second is work elimination. Think of this as more continuous improvement. Let's eliminate the work, let's streamline things versus just [mandate].
>
> So on the SG&A front, that is active and that is going to be pronounced in next year's results. And we would expect that to have a pretty substantial discussion point in Q4 and then continuing throughout next year.
>
> On the variable costs, there is a lot to be done with our partners from tire manufacturers to parts manufacturers to work through the supply chain to

> get not just the right price but the right degree of cash investment that we need to make. That is active. You are actively partnering with those vendors to really reset the relationships in a positive and constructive way for both companies, ourselves as well as our partners.
>
> On the operating costs in the stores, frankly, I think we've been lagging there, and we are actively looking at putting in basic, what I would consider to be efficiency programs. How do we streamline how long it takes us to do a tire change or an oil change. We're actively looking at upgrading store managers and regional managers, with the right skill sets so that they can really service the customers far better and give them more value as well as more value for us. So our principal approach there is to coach versus replace, but obviously, there will be a few folks along the way.
>
> The last thing which we haven't done a good job of, candidly, is we haven't done much in the way of greenfields. I think there have been -- you can [swing] out in a few different ways, 4 to 6 greenfields over the last few years. That is totally unacceptable. And we need to target something well north of that to fill in areas and grow with the population growth. That is something that we're currently sizing.
>
> We have a number of greenfields that we're targeting to open really over the course of this year with an acceleration to next, and we're just sizing exactly where it makes sense to go. So that may be more than you wanted, Dan. But I think the holistic thesis is we have to get better on multiple fronts and accelerate. And the CEO replacement and COO replacement and several other management will help effectuate that, getting folks that are appropriate for this next stage of the journey and really drive forward with speed, haste and pragmatism.

232. Not once in this extended colloquy, or anywhere else during the Third Quarter Conference Call did either Defendant Willetts or Defendant Papapostolou acknowledge that IEH Auto Parts Holding LLC was bankrupt.

233. The presentation released in concert with the Third Quarter 2022 Conference Call highlighted the $2 per depositary unit distribution, as well as the Company’s net income, EBITDA, and a $1 billion increase in Indicative Net Asset Value as of September 30, 2022, when compared to December 31, 2021. In a slide specific to the Automotive segment, the presentation stated that “[m]anagement continues to focus on consolidating its Distribution Center footprint, growing e-commerce and rebalancing its

inventory." Finally, the Presentation identified total liquidity of $7.086 billion and broke down the Company's NAV by segment.

234. On or about November 21, 2022, IEP announced a sales agreement with Jefferies LLC, pursuant to which IEP would issue and sell additional units having an aggregate amount of up to $400 million through Jefferies. Thereafter, IEP sold 3,942,226 units, for proceeds of $202 million, in the fourth quarter of 2022 and 3,395,353 units, for proceeds of $175 million, in the first quarter of 2023. IEP's secondary offerings of its depositary units to the public during the Class Period totaled over $1.5 billion in fresh capital infusion.

235. A Form 10-K for the period ending December 31, 2022, filed by the Company with the SEC (the "2022 Form 10-K") and executed by Defendants Icahn, Willetts, and Papapostolou, included a footnote referring, in passing, to Icahn's use of certain IEP units to "secure certain personal indebtedness":

> The number of depositary units pledged to secure these loans fluctuates in certain years and from time to time as a result of changes in the amount of outstanding principal amount of the loans, the market price of the depositary units, and other factors. Mr. Icahn has advised that he and his affiliates have sufficient additional assets to satisfy any obligations pursuant to these loans without recourse to the depositary units, he has no need or intention to allow foreclosure on such collateral, and that he is current on all principal and interest payments with respect to the loans, and there has never been an event of default or a default under any of the loans.

(Emphasis added). Despite disclosing the existence of this indebtedness, at no point did Defendants acknowledge or disclose the substantial risk to Mr. Icahn in the event of a margin call, or that Defendants were engaging in the dividend inducement scheme for the purpose of artificially inflating the trading price of IEP units to forestall or prevent such a margin call.

The Auto Parts Bankruptcy

236. On January 31, 2023, IEH Auto Parts Holding LLC filed a "Voluntary Petition for Non-Individual Filing for Bankruptcy" ("Voluntary Petition") on Official Form 201, in the United States Bankruptcy Court for the Southern District of Texas, which included debtors Auto Plus Parts, Auto Plus, Circle City and Haledon Auto Parts, and was signed by defendant Willetts, among its other subsidiary directors, which noted estimated liabilities between $100 million and $500 million. As would be revealed on March 31, 2023 by IEP affiliated debtor subsidiary, Auto Parts, Auto Sales, LLC itself declared assets of $0 with "Total Liabilities" of $188,012,044.90. Plaintiffs are informed and believe and thereupon allege that the new CEO and CFO of IEP, and Carl Icahn, did not decide to file the Voluntary Petition overnight but were and would have been aware of the impending bankruptcy filing after internal discussions about filing for bankruptcy protection respecting certain entities comprising the IEP Automotive segment in 2022, and at a time when such a filing could have been made during fiscal year 2022 rather than waiting until after the close of the fiscal year 2022 calendar year and the December 31, 2022, secondary offering of 3,395,353 units to the public at $51.54 per unit.

237. Plaintiffs are informed and believe and therefore allege that IEP would have been required to take an inventory write down and large charge on its balance sheet when reporting its financial results for the fourth quarter and fiscal year 2022, which it thereby delayed by at least a full quarter by virtue of delaying the filing of the Voluntary Petition and consequent additional triggering analysis that required the impairment of assets charge, as more fully discussed below.

238. On February 24, 2023, IEP issued a press release titled "Icahn Enterprises L.P. Reports Fourth Quarter 2022 Financial Results" (the "Fourth Quarter 2022 Press Release") which stated, *inter alia*, that revenues were $14.1 billion and net loss attributable to Icahn Enterprises was $183 million, or $0.57 per depositary unit, for the year ended December 31, 2022. IEP stated that for the same period, "indicative net asset value

increased by $522 million to $5.6 billion" due, in part, to "changes in the fair value of certain subsidiaries which are not included in our GAAP earnings reported above."

239. The Fourth Quarter 2022 Press Release highlighted in bold bullet-points both increased Net Asset Value and the Icahn controlled Board's declaration of a $2 per unit quarterly dividend distribution, among certain other specific financial results.

240. During IEP's follow-on conference call with analysts/investment management firms on February 24, 2023 ("Fourth Quarter 2022 Conference Call"), Defendant Willetts reported that "[w]e are putting our activist principles into effect … in our investment segment … we strongly believe in hedging our positions to negate risk, especially in the volatile markets that we're living in today."

241. On the Fourth Quarter 2022 Conference Call, Willetts reported a year end increase in net asset value of "$522 million to $5.6 billion as compared to December 31, 2021," noting that the "change in indicative net asset value includes, among other things, changes in the fair value of certain subsidiaries, which are not included in our GAAP earnings reported above." He added that "automotive services, revenue growth remained strong at over 13% for the full year of 2022," that in "Q4, the team executed the first phase of efficiency actions targeting corporate SG&A costs" and that while "additional efficiency actions are planned in the first half of 2023, the Company is intensifying its focus on customer service and upgrading its premium services offerings."

242. In concluding his presentation, before turning the call over to Defendant Papapostolou, Willetts noted that the "new CEO and CFO are now in place … and the overall leadership team is rapidly executing the plan for 2023 performance" further noting that "[t]he IEP Board declared a $2 quarterly distribution …."

243. Newly appointed CFO Papapostolou repeated several of the fourth quarter 2022 financial results included in the Fourth Quarter 2022 Press Release. With regard to the Energy Segment, he noted fourth quarter net sales of "$2.7 billion compared to $2.1 billion in the prior year quarter" with Adjusted EBITDA of "$168 million for Q4'22

compared to $40 million in Q4'21." Regarding the Automotive segment, he reported that "Q4'22 net sales and other revenues for the Auto segment was $585 million, an increase of $22 million from the prior year quarter," and "Automotive service revenue increased by $43 million as compared to the prior year period due to price increases offset by lower volumes," adding that "Q4'22 aftermarket part sales decreased by $25 million as compared to the prior year period, mainly due to lower volumes," and that "[d]uring the quarter, the segment was negatively impacted by increased inventory reserves and out-of-period adjustments." CFO Papapostolou also disclosed that ***"[s]ubsequent to year-end, Auto Plus … filed a voluntary Chapter 11 bankruptcy***" (emphasis added), which he assured was a "proceeding…limited to Auto Plus and will not have a segment impact to Icahn Enterprises."

244. IEP's CFO thereafter assured the market that "[w]e maintain ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities" ending Q4'22 with cash, cash equivalents, investments in the investment funds and revolver availability "totaling approximately $6.8 billion," adding, "[i]n summary, we continue to focus on building asset value and maintaining liquidity to enable us to capitalize on opportunities within and outside our existing operating segments."

245. During the Fourth Quarter 2022 Earnings Conference Call, Jefferies analyst Fannon inquired about the auto parts bankruptcy: "[y]ou mentioned the bankruptcy of the auto parts not being significant … is there a way to quantify that … just a little more color on what that means and how that should play through as that process unfolds would be helpful."

246. IEP's CFO deflected and was not transparent, stating:

> . . . we don't break out the Auto Plus business in our financials, but we did deem Auto Plus was not a significant subsidiary of Icahn Enterprises … nor was it a strategic shift getting rid of that subsidiary. So it would not be a significant impact but we can't quantify it at this time and it was a

> subsequent event. So maybe during the Q1 earnings, we'll be able to provide more color.

247. Then Andrew Berg of Post Advisory Group, L.L.C. Investment Management, pushed for more information regarding net asset value and the Automotive segment, forcing a response from defendant Willetts, in a colloquy as follows:

> **Berg**: Okay. Great. And then lastly, just looking at the asset values that you guys provide, there were sort of 3 big areas where we saw that indicative value change, 1 of which was in automotive owned real estate. And you mentioned on the call that there were certain write-downs that were taken, can you quantify those write-downs? And given the Auto Plus that happened subsequent to quarter end, I just want to understand that decline in value that you show in automotive a little bit better as we think about it from 3Q to 4Q.
>
> **Willetts**: Sure. I mean I think the biggest move that is represented there, we'll separate it into what I consider the operating companies in the real estate. The NAV is a valuation-based approach, which is obviously non-GAAP. And real estate we value once a year. And given the movement in cap rates, which has been relatively significant, we adjust our net asset values down in the real estate sector. It doesn't really change any of the underlying economics for that sector for our ability to get market rents that we're getting in the past. But the reality is when you do an independent valuation, then you look at cap rates – as much as you may not wish to, you have to recognize that based on our methodology. So that was the single biggest change in the automotive real estate sector.
>
> I'd say in terms of the operations, there were a number of items that I would characterize as stemming from a new leadership team particularly in the services. We've been focused on a full balance sheet review, cleaning up processes, ensuring that controllership is where it needs to be and as we really looked back, we saw a number of items that were not to our liking. And so several additional reserves were posted which I would characterize some of them as methodology change…. For example, let's post an excess and obsolete inventory methodology. Let's reevaluate some of the capitalized items yield for inventory. Those are just reevaluation of methodology. And then frankly, there are other ***items that we had to recognize that should have been recognized perhaps a little bit more promptly*** than they have been between Q4 and Q1, 2 and 3. (emphasis added).
>
> **Berg**: Okay. So it's pretty much new management coming in and a bit of a cleanup. That makes sense.
>
> **Willetts:** It's a bit of a cleanup. We're really focused on the integrity of the numbers there.

(Emphasis added).

248. The Company's Fourth Quarter 2022 Earnings Presentation on February 24, 2023 ("Fourth Quarter 2022 Presentation") utilized slides that highlighted, among other financial results, the increased Net Asset Value as of December 31, 2022, increased the full year Adjusted EBITDA of $778 million versus $273 million for 2023, and importantly, the Board's declaration of a dividend of $2.00 per depositary unit for the quarter. Another slide, titled "Segment: Automotive," highlighted an increase in net sales and other revenues by $22 million for the Segment with improved Adjusted EBITDA of $54 million, while noting that "Q4 2022 results were negatively impacted by inventory reserves and out of period adjustments", with no quantification. The same slide "Q4'22" revenue in Automotive Services increased by $43 million versus the fourth quarter of 2021, and a decrease in Q4'22 revenues in the "Aftermarket Parts Sales" of $25 million compared to the fourth quarter of 2021. Another slide showing the "company's calculation of indicative net asset value" reported such value for Icahn Automotive Group of $1.702 billion as of December 31, 2022, which included $381 million for "Automotive Parts", and total "Indicative Net Asset Value" for all "market-valued subsidiaries and investments" of $5.643 billion as of December 31, 2022, versus $5.121 billion as of December 31, 2021. The Icahn Automotive Group collective INAV was reported as $2.617 billion in Q1'22, $2.517 billion in Q2'22 and $2.322 billion for Q3'22, with Automotive Parts reported as $493 million in Q1'22, $479 million in Q2'22, and $490 million in Q3'22. Defendants' foregoing statements were false, deceptive, and misleading for the reasons alleged above, particularly with respect to Net Asset Values and concerning the material impairment of the Auto Parts asset, which should have been recognized previously by not later than the fourth quarter of 2022, and with regard to the material, undisclosed risk and existence of the dividend inducement scheme, as more fully alleged below, The impairment charge was delayed past the fourth quarter of 2022, thus enabling IEP to engage in another secondary offering in December 2022 without full and adequate disclosure that Auto Parts was materially and significantly impaired in the amount of ***$226 million***.

249. The disclosures made by IEP and the individual defendants during the fiscal year ending December 31, 2022**,** were untrue because they:

a. Concealed from the market Defendants' ***dividend inducement scheme*** by which IEP and the Individual Defendants used heightened dividend yields as an inducement to buoy or inflate the trading price of IEP units and insulate Mr. Icahn from a massive margin call on his personal margin loan, as more fully discussed below, as deceived investors clamored to invest in a so-called "dividend stock," ostensibly offering increased asset values;

b. Concealed from the market that the loan-to-value ratios in Mr. Icahn's debt covenants tethered to IEP's unit trading price created a significant and ***material undisclosed risk of a margin call*** on Mr. Icahn's personal loans;

c. ***Reported indicative net asset values were substantially inflated***, due to a combination of overly aggressive marks on IEP's investments and continued year to date underperformance in operating assets. Unlike GAAP NAV, "indicative" NAV depends upon the chosen valuation methodology one applies, as well as the assumptions regarding the inputs to the valuation calculations. IEP's indicative NAV, at all times, well exceeded its GAAP NAV, as shown in the table below at ¶ 308;

d. IEP failed to disclose the following qualitative factors, *inter alia*, were present at least by no later than the fourth quarter of 2022 for its Automotive Parts segment: lessened demand, supply chain disruptions, an inflationary environment, the effects of COVID-19, drops in the realizable value of inventory, declining carrying values (related to inventory and to future cash flows) resulting from reorganization, ongoing macroeconomic factors related to the automotive industry, and poor financial performance. ***These triggering events required IEP to perform an impairment analysis of the Automotive Parts segment***, which it failed to timely perform and take a significant impairment charge with respect to the

impaired Auto Parts asset within the Automotive segment—which impairment charge would need to be taken no later than the fourth quarter of 2022, but was delayed, deceiving the market until the $223 million charge later revealed when IEP reported its first quarter 2023 results;

e. The ***values IEP reported for its Automotive segment, and in particular its Automotive Parts segment, were misleading*** because (1) the realizable value of inventory substantially dropped, (2) the carrying value exceeded its fair value, (3) of changing carrying values (related to inventory and to future cash flows) resulting from reorganization, (4) of ongoing macroeconomic factors related to the automotive industry, and (5) of poor financial performance;

f. Concealed and failed to disclose that delinking Mr. Icahn's loan covenant LTV ratios from IEP's unit trading price would ***adversely impact the Company's distribution of dividends***; and

g. *See also,* the subpart below entitled Additional Bases for Falsity of Defendants' Statements.

<u>THE TRUTH BEGINS TO EMERGE</u>

250. On May 2, 2023, Hindenburg Research published a report (the "Hindenburg Report") disclosing, among other things, that IEP's "last reported indicative year-end [net asset value] of $5.6 billion is inflated by at least 22%." In greater part, the Report stated:

a. Icahn Enterprises (IEP) is an ~$18 billion market cap holding company run by corporate raider and activist investor Carl Icahn, who, along with his son Brett, own approximately 85% of the company.

b. ***Our research has found that IEP units are inflated by 75%+ due to 3 key reasons: (1) IEP trades at a 218% premium to its last reported net asset value (NAV), vastly higher than all comparables (2) we've uncovered clear evidence of inflated valuation marks for IEP's less liquid and***

private assets (3) the company has suffered additional performance losses year to date following its last disclosure.

c. Most closed-end holding companies trade around or at a discount to their NAVs. For comparison, vehicles run by other star managers, like Dan Loeb's Third Point and Bill Ackman's Pershing Square, trade at discounts of 14% and 35% to NAV, respectively.

d. We further compared IEP to all 526 U.S.-based closed end funds (CEFs) in Bloomberg's database. Icahn Enterprises' premium to NAV was higher than all of them and more than double the next highest we found.

e. A reason for IEP's extreme premium to NAV, based on a review of retail investor-oriented media, is that average investors are attracted to (a) IEP's large dividend yield and (b) the prospect of investing alongside Wall Street legend Carl Icahn. Institutional investors have virtually no ownership in IEP.

f. Icahn Enterprises' current dividend yield is ~15.8%, making it the highest dividend yield of any U.S. large cap company by far, with the next closest at ~9.9%.

g. ***As a result of the company's elevated unit price, its annual dividend rate equates to an absurd 50.5% of last reported indicative net asset value.***

h. The company's outlier dividend is made possible (for now) because Carl Icahn owns roughly 85% of IEP and has been largely taking dividends in units (instead of cash), reducing the overall cash outlay required to meet the dividend payment for remaining unitholders.

i. The dividend is entirely *unsupported* by IEP's cash flow and investment performance, which has been negative for years. IEP's investment portfolio has lost ~53% since 2014. The company's free cash flow figures show IEP has cumulatively burned ~$4.9 billion over the same period.

j. Despite its negative financial performance, IEP has raised its dividend 3 times since 2014. IEP's most recent dividend increase came in 2019, when it raised quarterly distributions from $1.75 to $2.00 per unit. IEP's free cash flow was negative $1.7 billion in the same year.

k. Given that the investment and operating performance of IEP has burned billions in capital, the company has been forced to support its dividend using regular open market sales of IEP units through at-the-market (ATM) offerings, totaling $1.7 billion since 2019.

***

l. Supporting this structure is Jefferies, the only large investment bank with research coverage on IEP. It has continuously placed a "buy" rating on IEP units. In one of the worst cases of sell-side research malpractice we've seen, Jefferies' research assumes in all cases, even in its bear case, that IEP's dividend will be safe "into perpetuity", despite providing no support for that assumption.

m. Since 2019, one bank has run all of IEP's $1.7 billion in ATM offerings: Jefferies. In essence, Jefferies is luring in retail investors through its research arm under the guise of IEP's 'safe' dividend, while also selling billions in IEP units through its investment banking arm to support the very same dividend.

n. ***Adding to evidence of IEP's unsustainability, we estimate that IEP's last reported indicative year-end NAV of $5.6 billion is inflated by at least 22%, due to a combination of overly aggressive marks on IEP's less liquid/private investments and continued year to date underperformance.***

o. ***In one example, IEP owns 90% of a publicly traded meat packaging business that it valued at $243 million at year-end. The company had a market value of only $89 million at the time. In other words, IEP marked the value of its public company equity holdings 204% above the prevailing public market price.***

p. The mark is even more irregular given that IEP bought over a million shares of the company in December before immediately writing up the value of those shares by ~194% in the same month.

q. ***In another instance, IEP marked its "Automotive Parts" division at $381 million in December 2022. Its key subsidiary declared bankruptcy a month later.***

r. IEP reported $455 million in "real estate holdings" in its most recent quarter. The reported values in this segment have been remarkably stable for years despite declining net income and despite including (i) the Trump Plaza in Atlantic City, which was razed to the ground in 2021; (ii) a country club that became nearly insolvent in 2020 before ownership reverted to its members in 2021; and (iii) a lack of transparency on other assets and valuations.

s. ***The irregular valuation marks fit a pattern: In January of 2020, UBS dropped coverage of IEP citing a "lack of transparency" following its research showing marks that were "divergent from their public market values," among other issues.***

t. Beyond aggressive marks, Icahn's liquid portfolio has continued to generate losses. Our analysis of Icahn's latest December 2022 13-F filing indicates that IEP's long holdings have lost ~$471 million in value year to date, despite the S&P gaining ~9.2% in the same time frame.

u. IEP disclosed that its investment fund had a 47% notional short bet in its December 2022 filings. Given the positive market performance, we estimate this short bet has contributed at least a further $272 million in year- to-date losses.

v. ***Overall, we estimate IEP's current NAV as being closer to $4.4 billion, or 22% lower than its disclosed year-end indicative NAV of $5.6 billion. The analysis suggests that units currently trade at a 310% premium to NAV, with an annual dividend rate of 64% of NAV.***

w. Tightening matters further, IEP is highly levered, with $5.3 billion in Holdco debt and maturities of $1.1 billion, $1.36 billion, and $1.35 billion due in 2024, 2025, and 2026, respectively.

x. IEP's debt covenants limit the company's financial flexibility: IEP is not permitted to incur additional indebtedness and is only allowed to refinance old debt. With interest rates having increased, IEP will need to pay significantly higher interest expenses on future refinancings.

y. Carl Icahn's ownership in IEP comprises about 85% of his overall net worth, according to Forbes, giving him limited room to maneuver with his own outside capital. We have assessed that Icahn has little ability or reason to bail out IEP with a capital injection, particularly at such elevated unit prices.

z. Further underscoring Icahn's limited financial flexibility, he has pledged 181.4 million units, ~60% of his IEP holdings, for personal margin loans. Margin loans are a risky form of debt often reliant on high share (or unit) prices.

aa. **Icahn has not disclosed basic metrics around his margin loans** like loan to value (LTV), maintenance thresholds, principal amount, or interest rates. We think **unitholders deserve this information in order to understand the risk of margin calls** should IEP unit prices revert toward NAV, a reality we see as inevitable.

bb. Given limited financial flexibility and worsening liquidity, we expect Icahn Enterprises will eventually cut or eliminate its dividend entirely, barring a miracle turnaround in investment performance.

cc. Overall, we think Icahn, a legend of Wall Street, has made a classic mistake of taking on too much leverage in the face of sustained losses: a combination that rarely ends well.

(Emphasis added).

251. The Report and its sophisticated expert analysis, connecting the disparate dots, caused the tainted air of deception to start leaking out of the IEP balloon and commenced the correction – albeit partial – of the artificial inflation embedded in the trading price of IEP units caused by the fraudulent and deceptive statements and scheme. Still, the Report noted the fact that Icahn and IEP were ***keeping investors in the dark*** about basic metrics surrounding Icahn's personal margin loans, respecting which he pledged 60% of his IEP holdings as collateral – enough to force him to lose control in the event of a violation of loan-to-value ratio debt covenants.

252. Material information and metrics such as loan-to-value ratios, maintenance thresholds, principal amount of his personal loan, and interest rates, remained concealed from the light of day. The Hindenburg Report was correct that investors had never been given, nor had Defendants timely or adequately disclosed, this material information, which was essential in order to fully and adequately inform the market of the risks arising from the Icahn margin loans and associated risk with respect to the distribution of dividends. The Report correctly noted that "***unitholders deserve this information in order to understand the risk of margin calls should IEP unit prices revert toward NAV, a reality we see as inevitable***." (Emphasis added).

253. But the Report – no doubt owing to Icahn's and the IEP Defendants' lack of transparency and inadequate risk disclosures – still did not disclose, nor did it appreciate, the concealed fact that the covenants governing Carl Icahn's personal loans and associated LTV ratios were inextricably linked to the trading price of IEP's depositary units, not NAVs, or that distributions of dividends approved by the Carl Icahn controlled Board during the Class Period and through the first quarter of 2023 and thereafter were part and

parcel of a deliberate scheme to insulate Icahn from a margin call by using generous dividends amid inconsistent financial results to buoy or inflate the trading price of IEP units, which margin call could effectively divest Icahn of his majority holdings and control of IEP, the Company he founded, and cause him grave financial harm.

254. On this news, Icahn Enterprises' share price fell $10.06 per share, or 20%, to close at $40.36 per share on May 2, 2023.

255. Hindenburg Research has a history of publishing detailed, thoughtful analyses of publically traded companies and investment vehicles. Hindenburg's analyses often include and rely on extensive interviews with witnesses and detailed analysis of a broad variety of documents, including both statements by the companies at issue and their officers, and unrelated third-party documents.

256. For example, in September 2020, Hindenburg published a detailed report, relying on interviews with employees and business partners, public disclosures, and other research, on electric vehicle manufacturer Nikola Corporation, challenging claims by its CEO and founder, Trevor Milton about the company's development of electric vehicles.[2] Ten days after the publication of the Hindenburg Research on Nikola, Milton was forced to resign from the company. Thereafter, Milton was charged with securities fraud in relation to the same claims that were at the heart of the Hindenburg report. In October 2022, Milton was convicted of fraud and, on December 18, 2023, Milton was sentenced to four years in prison.

257. Similarly, on December 18, 2023, the SEC filed suit in the United States District Court for the Southern District of New York against Tingo Group for allegedly overstating its financial results in a fraud of "staggering" scope. Tingo had been the subject of a June 6, 2023 report by Hindenburg in which Hindenburg called the company out as a "scam with completely fabricated financials."[3]

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[2] https://hindenburgresearch.com/nikola/, last visited on January 6, 2024.
[3] https://hindenburgresearch.com/tingo/, last visited on January 6, 2024.

258. IEP stock continued to decline in the wake of the Hindenburg Report, losing approximately $7.5 billion in value since May 2, 2023 through May 4, 2023, with its shares declining more than 40% since Hindenburg reported that IEP was over-leveraged and had overstated the value of its holdings, which had, in turn, caused IEP to delay its first quarter 2023 conference call from May 3, 2023 to May 10, 2023, while it commenced a campaign to halt and reverse the stock price decline.

Icahn Doubles Down

259. Icahn and IEP doubled down, further deceiving and confounding the market. To that end, after the market closed on May 4, 2023, IEP issued the following statement to the investment community (the "May 4, 2023 Press Release"):

> We would like to **reassure** our long-term unitholders that the market disruption caused by the self-serving **Hindenburg report does not affect IEP's liquidity**. We would normally wait for the earnings call but, due to the many inquiries we have received, we are **announcing now** our intention to declare **a distribution in the amount of $2.00 per depositary unit** for the **quarter ended March 31, 2023**, with the election to receive either cash or additional depositary units. I as usual will elect to take the distribution in units. The **fundamentals of our business**, and our belief in the activist paradigm that has served us well for decades, **remain unchanged**. We obviously **disagree with the inflammatory assertions in the Hindenburg report** and intend to respond at length – and to vigorously defend IEP and its unitholders. As we stated previously, we believe that IEP's performance will speak for itself over the long term as it always has," stated Carl Icahn, Chairman of the Board of Icahn Enterprises.
>
> To **receive accurate information about the Company**, all investors are encouraged to review materials filed by IEP with the Securities and Exchange Commission and available on its investor relations website

(Emphasis added).

260. As before, IEP used its dividend distribution to induce and restore investor confidence and demand, trumpeting its liquidity, while further re-assuring investors, via its Board Chairman, Defendant Carl Icahn, whose comments had tremendous influence and

sway over investors. Mr. Icahn's personal assurance that the Hindenburg Report "does not affect IEP's liquidity," his declaration of yet another $2 per depositary unit dividend (unchanged for over sixteen quarters and four years), assurance that the business fundamentals and activist paradigm that served IEP well for decades "remain unchanged," while "disagree[ing]" with Hindenburg, stating that "IEP's performance will speak for itself over the long term as it always has," and directing and encouraging investors to IEP's SEC filings "to receive accurate information about the Company," furthered the fraudulent and deceptive scheme and confounded the market, achieving Defendants' ulterior goal in issuing the May 4, 2023 Press Release. After sliding to a close of $30.09 on May 4, 2023, on heavy volume, IEP's trading price began to rise, closing at $38.13 per unit on May 5, 2023, on volume of 10,971,400 units, a price point it has not returned to since.

261. With its stock price closing at $32.22 per unit on May 10, 2023, IEP issued a press release entitled "Icahn Enterprises L.P. Reports First Quarter 2023 Financial Results" ("First Quarter 2023 Press Release"), highlighting again, as before, the Icahn controlled Board approval of yet another $2.00 per depositary unit, while emphasizing on this particular occasion that it was "the 72nd consecutive quarterly distribution since 2005." IEP also reported a net loss in the first quarter of $270 million, or $0.75 per depositary unit, versus net income of $323 million, or $1.06 per depositary unit. IEP reported Adjusted EBITDA for the first quarter was $116 million compared to $616 million for the first quarter of 2022, while "Indicative Net Asset Value was relatively flat at $5.6 billion as of March 31, 2023 and December 31, 2022," which "change" was a result of the "fair value of certain subsidiaries." Goodwill valuation from the fourth quarter of 2022 to the first quarter of 2023 was the same, at $288 million. As before, IEP disclosed using "certain non-GAAP financial measures in evaluating its performance" and that it uses "indicative net asset value as an additional method for considering the value of the Company's assets," once again adding and "we believe that this information can be helpful to investors," while noting that it does not represent the market price at which the depositary units trade.

262. In the First Quarter 2023 Press Release, IEP was forced to admit, in the face of a looming investigation by the government, a valuation for Icahn Automotive Group of $1.404 billion versus fourth quarter 2022 valuation of $1.702 billion, and a valuation of ***$0*** for Automotive Parts due to the bankruptcy and consequent ***write down "to zero,"*** "offset by the recognition of a $188 million related party note receivable which is reflected in other holding company net assets" – thus, "the total impact to NAV" regarding Automotive Parts for Q1'23 was "a reduction of $193 million." (Emphasis added).

263. Then, on May 10, 2023, before the market opened, Icahn Enterprises filed its Quarterly Report on Form 10-Q with the SEC for the period ended March 31, 2023 (the First Quarter 2023 Form 10-Q"). Therein, the Company stated that the U.S. Attorney's office for the Southern District of New York contacted Icahn Enterprises on May 3, 2023, seeking production of information relating to the Company, certain of its affiliates' "corporate governance, capitalization, securities offerings, dividends, valuation, marketing materials, due diligence and other materials." The Company claimed it is "cooperating with the request" and is "providing documents in response to the voluntary request for information." In greater part, the Company stated:

> The U.S. Attorney's office for the Southern District of New York contacted Icahn Enterprises L.P. on May 3, 2023, seeking production of information relating to it and certain of its affiliates' corporate governance, capitalization, securities offerings, dividends, valuation, marketing materials, due diligence and other materials. We are cooperating with the request and are providing documents in response to the voluntary request for information. The U.S. Attorney's office has not made any claims or allegations against us or Mr. Icahn with respect to the foregoing inquiry. We believe that we maintain a strong compliance program and, while no assurances can be made and we are still evaluating the matter, we do not currently believe this inquiry will have a material impact on our business, financial condition, results of operations or cash flows.

264. In the First Quarter 2023 Form 10-Q, Icahn Enterprises reported a ***$226 million charge related to Auto Plus***, which the Hindenburg Report had identified as an

overvalued holding:

> With respect to our Automotive segment, we have invested significant resources in various initiatives to remain competitive and stimulate growth. Despite these efforts, in January 2023, Auto Plus filed the Chapter 11 Cases in Bankruptcy Court. As a result of this filing, the Company has determined that it no longer controls Auto Plus and has deconsolidated its investment in Auto Plus effective as of January 31, 2023 resulting in a non-cash charge of $226 million recorded in the three months ended March 31, 2023 and determined that our remaining equity investment in Auto Plus is now worth $0.

265. First Quarter 2023 Form 10-Q, IEP also acknowledged selling 3,395,353 units to the public at or about $51.54 per unit, for proceeds of $175 million.

266. On this news, Icahn Enterprises' unit price declined $5.75 per share, or 15.1%, to close at $32.22 per share on May 10, 2023.

267. Still, Icahn and IEP would not relent. On May 10, 2023 at 11am Eastern, amid IEP trading prices declining from a close of $50.42 on May 1, 2023 to a price of $33.94 per depositary unit when the market opened on May 10, the IEP Board chaired by Mr. Icahn issued a press release intended to blunt the impact of the Hindenburg Report and obscure and overcome its valid analysis and disclosure of the truth, hypocritically entitled "Icahn Enterprises Responds to Self-Serving Short Seller Report" ("May 10, 2023 Press Release"). Therein, the IEP Board reiterated that "the greatest paradigm for investment success is activism," and boasted of its ability "over the years" to generate shareholder value "through activist campaigns where we were able to guide boards and CEOs to take the steps necessary to enhance the value of their companies," while also assuring investors that "[w]e expect that, over time, IEP's performance will speak for itself. We have a strong balance sheet, with $1.9 billion of cash and $4 billion of additional liquidity," adding that "[t]he good news for IEP's investors is that ***we have Carl, the liquidity, the strategy and the know-how*** to fight back." (emphasis added).

268. The self-serving May 10, 2023 Press Release chided the Hindenburg Report, accusing it of "misleading and self-serving claims," which it prefaced with a boldly

highlighted statement that "IEP's Board of Directors is focused on ***preserving an optimal liquidity position for the benefit of all unitholders***," adding that ***"[i]nvestors are attracted to this commitment***, which includes a long-term view of the Company's ***liquidity*** needs and a ***willingness to return capital*** in a fiscally responsible manner." (emphasis added).

269. The May 10, 2023 Press Release, issued by its Board over the PR Newswire, was itself deceptive and misleading, further doubling down on its false narrative about net asset values, while concealing the truth and the still concealed dividend inducement scheme and related risk. It continued to conceal the fact of a margin risk due to potential margin calls respecting Icahn's personal margin debt in the event of declining unit prices, or because the trading price of IEP units was linked to covenants respecting Icahn's personal debt, it also concealed the risk that delinkage of unit trading prices from Mr. Icahn's loan-to-value ratios would itself occasion an adverse impact on the amount of dividends awarded by IEP's Board, even in the face of substantial liquidity. Nor did the May 10, 2023 Press Release disclose the deceptive manner in which net asset values were being presented to the market, as discussed below.

270. The false statements and concealed risks of the May 10, 2023 IEP Press Release continued to deceive the market and buoy or artificially inflate the price of IEP units, at least until subsequent August 3, 2023 revelations and additional corrective disclosure, discussed below.

271. On May 10, in full-fledged damage control, IEP held its follow-on first quarter 2023 Icahn Enterprises Earnings Call ("First Quarter 2023 Earnings Conference Call"). Defendants were desperate to halt the decline in IEP's trading price. Willetts commenced his presentation by addressing the Hindenburg Report to address "mischaracterizations and concerns raised" therein, emphasizing that "IEP has $1.9 billion in cash on hand and $4 billion of additional liquidity in the Investment Funds," and that the Company is "well positioned for future success," adding that "[w]e have full confidence in the integrity of our financials and our reporting." Willetts represented that IEP's

"dividend policy is based on "our assessment of IEP's ability to return capital to unitholders over a long-term basis." In that regard, he added that "[w]e generate liquidity through operations, selling investments, and selling companies" noting that "[s]ince 2017, the firm has generated over $5 billion of cash from successful sales of controlled companies."

272. With regard to net asset values, Willetts explained that "90% of our NAV valuations are comprised primarily of either mark-to-market securities or audited GAAP book values or external valuations," while "[t]he remaining 10% are valued on a market comparable basis using historical EBITDA." Willetts commented that IEP's "indicative net asset value" as of the first quarter of 2023 "remained relatively flat at $5.6 billion," compared to as of December 31, 2022, and once again ended his part of the First Quarter 2023 Earnings Conference Call reminding investors that the "IEP Board declared a $2 quarterly distribution."

273. During the First Quarter 2023 Earnings Conference Call, CFO Papapostolou turned attention to the Automotive segment, with improved Adjusted EBITDA by $23 million compared to the first quarter of the prior year, of which $17 million was contributed by "deconsolidation of Auto Plus." First quarter 2023 revenue decreased $106 million from the prior year, "primarily due to the deconsolidation of Auto Plus," and "Automotive part revenues were down $129 million." IEP's CEO then disclosed that "[d]uring the quarter, Auto Plus' carrying value was removed due to the bankruptcy" which resulted in a "noncash charge of $226 million."

274. IEP's CFO assured investors that there was "ample liquidity at the holding company and at each of our operating subsidiaries to take advantage of attractive opportunities" with IEP ending the first quarter of 2023 with cash, cash equivalents, Investment Funds and Revolver availability totaling "approximately $6.9 billion," stating that, "[i]n summary, we continue to focus on building asset value and maintaining liquidity to enable us to capitalize on opportunities within and outside our existing operating segments," – a familiar and repeatedly scripted refrain. ***The First Quarter 2023 Earnings***

Conference Call ended without a single question – not surprising since the only participant on the call other than CEO Willetts and CFO Papapostolou was IEP's General Counsel, Jesse A. Lynn.

275. As before in every other quarterly slide presentation accompanying the earnings conference calls, the First Quarter 2023 Earnings Presentation of May 10, 2023 highlighted and emphasized IEP's dividend, stating that "[o]n May 9, 2023, the ***Board declared a quarterly distribution in the amount of $2.00 per depositary unit***," while also noting a ***first quarter 2023 net loss of $270 million*** and Adjusted EBITDA of $616 million for Q1'22, and a ***net asset value that was relatively flat at $5.6 billion***. (Emphasis added)

276. After the close of the market on May 10, 2023, the trading price of IEP depositary units climbed to a then-still artificially inflated price of $35.40. But while, the trading price of IEP units hovered in the $34-$35 per unit trading price range though May 18, 2023, afterward it declined into the $20-$29 per unit range through July 7, 2023. These trading ranges spelled trouble for Carl Icahn personally, due to certain LTV ratio debt covenants he had agreed to with respect to his massive personal debt—$3.7 billion dollars—LTV covenants based on the trading price of IEP depositary units.

277. Still, unbeknownst to IEP unit holders – Class members herein – the decline in trading price, threatening violation of Icahn's debt covenants, presented an undisclosed and ongoing risk to them with respect to their dividends. Pursuant to the Defendants' dividend inducement scheme, the Icahn Board had been declaring and distributing $2.00 per unit per quarter dividends since announcing in February 2019 and through the first quarter of 2023, despite the ups and downs in quarterly financial results, and at amounts Mr. Icahn dictated to his board in an effort to buoy or inflate the market trading price of IEP units, quarter after quarter, year after year, pursuant to an undisclosed dividend inducement scheme. The scheme was being advanced so that Mr. Icahn could personally continue to avoid a margin call on his massive personal indebtedness in the event the IEP's trading price declined low enough to trigger the violation of his personal debt covenants.

This significant undisclosed risk and danger buoyed and inflated the trading price of IEP units, consequently imbedding inflation arising from this deception throughout the Class Period.

278. The situation grew more precarious and the IEP dividend of $2 per unit per quarter, consistently declared throughout the Class Period, was now in real, albeit undisclosed, peril arising from the potential de-linkage of Mr. Icahn's own personal debt and related LTV covenants from IEP unit prices. Though it remained undisclosed, the deceptive use of dividends to positively buoy or enhance the trading price of IEP units was coming to an end, as unwitting investors continued to invest in IEP units at artificially inflated prices respecting which, for a very long time, had been a dividend-based investment paying healthy dividends ostensibly linked to IEP's liquidity, amid inconsistent financial results.

279. On the morning of July 10, 2023, before the opening of trading, IEP filed a Report on Form 8-K with the SEC constituting a "Regulation FD Disclosure" which stated as follows with regard to Mr. Icahn's personal margin loan:

> On July 10, 2023, Carl Icahn and certain of his affiliates entered into a three-year term loan agreement (the "Loan Agreement") with certain bank lenders, which amends and restates previous loan agreements with the lenders and consolidates all borrowings of Mr. Icahn … and provides for a principal payment of $500 million on or before September 1, 2023, quarterly principal payments of $87.5 million beginning in September 2024….the obligations under the Loan Agreement are secured by pledges of an aggregate of 320 million depositary units of IEP owned by Mr. Icahn and $2 billion of interests owned by Mr. Icahn in the private investment funds managed by IEP.
>
> …a margin call may only be triggered in the event that the loan-to-value ratio set forth in the Loan Agreement is not maintained. Unlike the previous loan agreements, for purposes of the loan-to-value ratio set forth in the Loan Agreement, the value of the pledged depositary units will be calculated based upon IEP's indicative net asset value rather than the market price of the depositary units.

280. On July 10, 2023, Reuters reported that Defendant Carl Icahn had restructured $3.7 billion in personal loans to "remove a link between his obligation to post

collateral and his holding company's share price buoying the stock which had been battered following an attack by short-seller Nathan Anderson." The July 10, 2023 Reuters article further noted that the Hindenburg Report "posed a threat to Icahn, who owns 85% of IEP and had used about 60% of his stake in the company to borrow from a group of banks. Icahn was obligated to post more collateral as the value of IEP's stock dropped" adding that "the share price milestones that triggered these obligations have not been disclosed." Reuters further reported that, following the restructuring, Icahn's requirements to post more collateral was tied to the "IEP's indicative net asset value, rather than IEP's share price, according to the filings," adding that "[I]n the amended loan agreement, Icahn agreed to provide additional collateral of $2 billion from his personal funds and 320 million IEP shares."

281. Reuters further reported that "Icahn will repay principal of $500 million on or before September 1, either quarterly principal payments of $87.5 million beginning a year after that, and a final principal payment of $2.5 billion at the end of the term, according to the filings."

282. On these disclosures, the price of IEP depositary units climbed from a close of $28.75 on July 7, 2023, to close at $28.75 on July 10, 2023, on trading volume of over 7.3 million units. The trading price remained in the low-thirties per unit range, until the dividend inducement scheme reached its end and was finally revealed to the market on August 3, 2023, as more fully noted below.

283. Still, investors remained unaware of the serious risk which was associated with loan-to-value ratios on Mr. Icahn's personal margin loans and the amount Mr. Icahn set for quarterly dividends, and remained in the dark with respect to the undisclosed dividend inducement scheme used to induce demand for IEP units to buoy or inflate their trading price.

284. Now, with Mr. Icahn's personal debt covenants' loan-to-value ratio no longer tied to IEP's trading price, Icahn was no longer motivated to continue that scheme

in order to avoid a massive margin call. Absent linkage of LTV ratios to IEP's unit trading price, and unbeknown to its investors, the many years of declaring significant $2 per unit quarterly dividend distributions, both in good quarters and in bad quarters, was coming to an abrupt end.

The Truth Fully Emerges

285. In a Company press release disseminated to the market on August 4, 2023, entitled "Icahn Enterprises L.P. (Nasdaq: IEP) today announced its Second Quarter 2023 Financial Results" ("Second Quarter 2023 Press Release"), it was reported that IEP had a net loss of $269 million or $0.72 per depositary unit compared to a net loss of $128 million or $0.41 per depositary unit in the second quarter of 2022. Adjusted EBITDA for the Second Quarter 2023 was $34 million compared to $126 million for the quarter. The Second Quarter 2023 Press Release reported that "indicative net asset value declined to $5.0 billion as of June 30, 2023, compared to $5.6 billion as of December 31, 2022.

286. With respect to IEP's liquidity as of June 30, 2023, it had cash and cash equivalents of $2.488 billion compared to $2.337 billion as of December 31, 2022, with cash held at consolidated affiliated partnerships and restricted cash of $2.598 billion as of June 30, 2023 compared to $2.549 billion as of December 31, 2022.

287. The Second Quarter 2023 Press Release quoted statements made by controlling unitholder, Company founder and Chairman of the Board, Carl Icahn, who further engaged in a strategy of deflection, falsely blaming the Hindenburg Report, which unveiled much of the adverse, undisclosed truth about IEP, for causing a decline of the trading price of IEP units and short selling respecting companies in which IEP invests or controls. Mr. Icahn acknowledged entering into the three year term loan agreement (while facing a massive margin call) with his personal lenders that "in [his] opinion … significantly diffused the effects" of the Hindenburg Report "and focused on our activist strategy and reduced our hedge book," while stating that "[t]hese actions have been a major factor in what I believe is IEP turning the corner in July," adding that "[i]n the month of

July, our publicly traded securities, which are included in our indicative net asset value, experienced over a $500 million increase in value, net of all hedge positions."

288. Nonetheless, despite "turning the corner in July" and increasing value, and contrary to prior practice and statements, especially those statements relating the $2 dividends to liquidity, not other financial metrics of performance, and contrary to the practice of paying the $2 per unit quarterly dividend for sixteen successive quarters, from March 2019 through the first quarter 2023, despite significant inconsistency of financial results over that time (as reflected in the charts and graphs IEP's above), Mr. Icahn – his massive personal loans LTV ratios no longer tethered to IEP's trading price—had no further need to continue the dividend inducement scheme. As a result, he revealed a different, rather opaque, approach to dividends, stating: "[T]he payment of future distributions will be determined by the board of directors quarterly, based upon current economic conditions and business performance and other factors that it deems relevant at the time declaration of a distribution is considered."

289. Then, despite claiming that IEP does not intend to let the Hindenburg Report "interfere with this practice." IEP lowered the boom on investors by revealing that "IEP is declaring a $1.00 per depositary unit distribution" for the second quarter. This was the lowest quarterly dividend distribution since even before February 10, 2013 – ten years earlier – when the Icahn controlled Board had raised the quarterly dividend tenfold, from $0.10 to $1.25 per depositary unit.

290. With regard to IEP's second quarter 2023 net loss, the $269 million amount included a onetime $116 million loss related to a loan receivable from Auto Plus in connection with its bankruptcy. IEP's liquidity as of June 30, 2023, when including cash, cash equivalents, its investment in the Investment Funds and revolver availability totaled $6.6 billion.

291. The Company's Second Quarter 2023 financial performance was within a range experienced in prior quarters respecting which the Icahn controlled Board has

declared a $2 per unit quarterly dividend. Cash and cash equivalents were higher in the second quarter than as of December 31, 2022. Icahn and IEP had falsely proclaimed that the Hindenburg Report was misleading – even doing so within the text of the Second Quarter 2023 Press Release. And yet, despite this, and just one quarter after the Hindenburg Report issued, and the United States Attorney for the Southern District of New York commenced an inquiry of IEP, the quarterly dividend was drastically cut. The cut in dividends had nothing to do with liquidity. Instead, released from his personal debt covenants' loan-to-value ratios being tethered to stock price performance, Icahn no longer had to continue the charade to buoy or inflate the trading price of IEP units by delivering generous quarterly dividends to investors in what was, in large part, a dividend stock, in order to avoid a massive margin call.

292. Unwitting investors were stunned. As a direct and proximate result of the Second Quarter 2023 Press Release and drastic dividend cut to a level below what was last seen since the Icahn controlled Board had declared a dividend of $1.25 per depositary unit on August 6, 2013 – 10 years earlier – despite healthy liquidity, and Company refutations regarding the Hindenburg Report – the trading price of IEP depositary units substantially declined from $32.68 per unit at the close of trading on August 3, 2023 to close at $25.09 on August 4, 2013, on historic trading volume of over 11,282,300 units in a single day. The IEP unit trading price continued its decline thereafter, to a close as low as $20.78 on August 23, 2023, on massive volume often well over 1 million units per day. It descended even further to close at $16.50 per depositary unit on October 31, 2023, and a close of $16.42 on November 21, 2023. It has never recovered to the heights achieved during the Class Period, nor even its trading price close on August 3, 2023.

293. IEP's quarterly dividend, declared on November 3, 2023, was also $1 per depositary unit despite the fact that defendant Willetts heralded IEP's third quarter 2023 results, exclaiming "[w]e're pleased with third quarter performance, which shows improvement over last year and last quarter," further demonstrating that there was no

longer any need to declare significant quarterly dividends as had been done for over four years and sixteen quarters in order to buoy or inflate the trading price of IEP depositary units in order to enable Icahn to avoid a margin call on his massive multi-billion dollar personal indebtedness.

294. The disclosures made by IEP and the individual defendants relating to fiscal year 2023 and prior to the end of the Class Period were untrue because they:

a. Concealed from the market Defendants' ***dividend inducement scheme*** by which IEP and the Individual Defendants used heightened dividend yields as an inducement to buoy or inflate the trading price of IEP units and insulate Mr. Icahn from a massive margin call on his personal margin loan, as more fully discussed below, as deceived investors clamored to invest in a so-called "dividend stock," ostensibly offering increased asset values;

b. Concealed from the market that the loan-to-value ratios in Mr. Icahn's debt covenants tethered to IEP's unit trading price ***created a material undisclosed risk of a margin call*** on Mr. Icahn's personal loans;

c. ***Reported indicative net asset values were substantially inflated***, due to a combination of overly aggressive marks on IEP's investments and continued year to date underperformance in operating assets. Unlike GAAP NAV, "indicative" NAV depends upon the chosen valuation methodology one applies, as well as the assumptions regarding the inputs to the valuation calculations. IEP's indicative NAV, at all times, well exceeded its GAAP NAV, as shown in the table below at ¶ 308;

d. IEP failed to disclose, prior to reporting IEP's first quarter 2023 results, the following qualitative factors, *inter alia*, were present at least by no later than the fourth quarter of 2022 for its Automotive Parts segment: lessened demand, supply chain disruptions, an inflationary environment, the effects of COVID-19, drops in the realizable value of inventory, declining carrying values (related to

inventory and to future cash flows) resulting from reorganization, ongoing macroeconomic factors related to the automotive industry, and poor financial performance. ***These triggering events required IEP to perform an impairment analysis of the Automotive Parts segment***, which it failed to timely perform and take a significant impairment charge with respect to the impaired Auto Parts asset within the Automotive segment—which impairment charge would need to be taken no later than the fourth quarter of 2022, but was delayed, deceiving the market until the $223 million charge later revealed when IEP reported its first quarter 2023 results;

e. The ***values IEP reported for its Automotive segment, and in particular its Automotive Parts segment, were misleading*** because (1) the realizable value of inventory substantially dropped, (2) the carrying value exceeded its fair value, (3) of changing carrying values (related to inventory and to future cash flows) resulting from reorganization, (4) of ongoing macroeconomic factors related to the automotive industry, and (5) of poor financial performance; and

f. *See also,* the subpart below entitled Additional Bases for Falsity of Defendants' Statements.

ADDITIONAL BASES FOR FALSITY OF DEFENDANTS' STATEMENTS

Defendants Inflated the Price of the Units Through a Series of Financial Manipulations

295. Throughout the Class Period, investors purchased IEP's units primarily for its unusually high dividend yield and they believed they were buying those units at fair prices. Dividend yield is calculated as the dividend paid by the Company, divided by the Company's share price. According to S&P Capital IQ, IEP's dividend yield averaged approximately 14% during the Class Period. These figures are set forth in the table below.

	2018	2019	2020	2021	2022
Dividend/unit	$7.00	$8.00	$8.00	$8.00	$8.00
Year-end price	$57.08	$61.50	$50.67	$49.59	$50.65
Dividend yield	12.3%	13.0%	15.8%	16.1%	15.8%

296. The "high-yield" on IEP's units compared very favorably with the average dividend yield on S&P 500 stocks, which ranged from 1.24% to 2.14%, and averaged 1.7% during the same time period.[4] For comparison, Bill Ackman's Pershing Square Holdings had an average yield of just 1.6% during the relevant time period.[5] IEP's yield exceeded that of an index of U.S. high-yield bonds, which had an average yield of just 6.21% during the Class Period.[6]

297. Companies pay dividends to attract and keep equity investors. Dividends are a way of sharing profits with company shareholders. But for a company to share profits, it must generate profits, which is why dividend-paying companies are typically well-established companies that consistently generate profits. By consistently paying dividends, a company signals that it is financially sound, generating profits, and has adequate liquidity.

298. Maintaining IEP's high dividend payout was key to attracting investor capital and keeping the stock price up. However, due to IEP's financial structure, the Company's earnings and operating cash flow showed significant volatility during the Class Period. The Company's Investment segment, which accounted for a significant portion of the Company's total NAV, pursued an active investment strategy similar to that of a hedge fund, seeking undervalued investments in a variety of equity, debt and synthetic securities, utilizing leverage and short selling, among other strategies. The risks associated with the

[4] *See, e.g.*, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/spearn.html, last visited January 6, 2024.
[5] Source: S&P Capital IQ.
[6] ICE BofA High Yield Bond Index, St. Louis Federal Reserve, https://fred.stlouisfed.org/series/BAMLH0A0HYM2EY, last visited on January 6, 2024.

Investment segment were substantial, as set forth in the Company's SEC filings.[7] The Investment segment's revenue and operating income were generated directly from the underlying investments in the Investment segment and were subject to extreme volatility. The table below shows investment returns and net income/(losses) generated by the Investment segment during the relevant time period.

	2017	2018	2019	2020	2021	2022
Returns	-15.4%	7.9%	2.1%	-14.3%	-0.3%	-2.4%
Net Income/(Loss)*	$ (1,543)	$ 679	$ 118	$ (1,447)	$ (32)	$ (223)
*millions						

299. Between 2018 and 2022, the Investment segment generated a total net loss of $905 million. Clearly, the returns to IEP's investment portfolio did not justify the high dividend yield. A disclosure in the Company's First Quarter 2021 Earnings Presentation admitted that, from inception in November 2004 through March 2021, the annualized rate of return on the investment portfolio was just 3.9%, far below the 14% dividend it was paying out to investors.[8]

300. In addition to the Investment segment, IEP invested in operating companies engaged in the Energy, Food Packaging, Home Furnishings, Pharmaceutical, and Automotive industries. It also held a Real Estate segment that engaged in residential home development, casino properties, resorts, country club management and commercial properties. These holdings also contributed to the Company's revenue, net income and cash flow.

301. From 2018 through 2022, the Company's cash flow from operations, described above, were as follows:

	2017	2018	2019	2020	2021	2022
Cash from Operations	(1,436)	923	(1,460)	(416)	321	1,055

[7] See, e.g., 2019 Form 10-K, pps. 17 – 22.
[8] First Quarter 2021 Earnings Presentation.

Between 2018 and 2022, IEP generated total cash from operations in the amount of $423 million.

302. Despite the fact that the Company's net income and operating cash flow showed significant volatility, and were often negative during the Class Period, IEP increased and continued to maintain its high dividend payout. During the 2018 through 2022 period, IEP's Board of Directors declared quarterly dividends in the amount of approximately *$10.2 billion*, exceeding operating cash flow by 2,311%. ***In order to maintain the illusion that the Company's financial condition was sound, and that it had adequate liquidity to fund the dividends, IEP did several things***. **First**, Icahn affiliates, which held approximately 90% of IEP's outstanding units, elected to take its dividend in the form of additional units in lieu of cash. **Second**, IEP embarked on a scheme to generate additional cash flow through "at-the-market" sales of additional units to the investing public at inflated prices. And **third**, IEP manipulated certain valuation metrics to present an inflated indicative NAV to investors.

303. By virtue of electing to take dividends in additional IEP units, rather than cash, Icahn affiliates increased their IEP holdings from approximately 175 million units to 300 million units between 2018 and 2022. The additional units could be used to further collateralize Mr. Icahn's personal loans, as long as the stock price was maintained. The election to take distributions in the form of additional depositary units in lieu of cash reduced the amount of cash necessary to fund the dividend. IEP paid cash dividends in the amount of approximately $1.075 billion during the 2018-2022 time period, which still exceeded operating cash flow by 154%.

304. The second strategy to maintain the illusion of adequate cash to fund the dividend inducement scheme is where monies generated by the sale of depositary units to new investors funded the dividends for existing investors. Beginning on or about May 2, 2019, IEP commenced its "at-the-market" offering, pursuant to which it sold depositary

units at market prices.[9] This program's success depended upon maintaining the high dividend payout (to attract capital) and maintaining a high stock price (to ensure adequate proceeds to cover the dividend).

305. From May 2019 through year-end 2022, IEP issued an additional 32.5 million depositary units, for total proceeds to the Company of approximately $1.7 billion. The average unit price of IEP during this period was $56.45, which is more than three times today's unit price of $17.00. The proceeds from these sales allowed IEP to continue the high payout rate to existing investors without dipping into the Company's cash reserves.

306. Defendants embarked on an additional scheme to maintain the illusion of a sound financial condition by presenting inflated "indicative" NAVs to investors. NAV is simply the value of a company's assets minus its liabilities. It is also referred to as shareholders' equity, or book value on a Company's balance sheet. IEP's NAV, according to Generally Accepted Accounting Principles ("GAAP"), can be found on the Company's balance sheet, as reported at quarter-end in the Forms 10-Q, and at year-end in the Forms 10-K filed with the SEC. The balance sheet reflects the carrying value of the assets, not necessarily the market value of the assets.

307. IEP also presented an indicative NAV to investors, which was not a GAAP measure, where the Company's assets were valued using a variety of valuation methods selected by the Company, which the Company said it considered to be a more "indicative" measure of the true net asset value of the Company. Indicative NAV is not governed by GAAP, and can be easily manipulated by IEP. The indicative NAVs were presented in IEP's quarterly earnings calls with the investment community. Jefferies also promoted the Company's indicative NAVs in its reports to the investment community (as seen below), and the indicative NAV was a metric relied upon by investors in IEP's units.

[9] 2019 Form 10-K, p.31.

Jefferies

EQUITY RESEARCH
Icahn Enterprises L.P. (IEP)

Exhibit 1 - IEP NAV

	6/30/2020	9/30/2020	12/31/2020	3/31/2021	6/30/2021	9/30/2021	12/31/2021
Market-valued Subsidiaries:							
Holding Company interest in Funds	$ 4,599	$ 4,058	$ 4,283	$ 4,675	$ 4,743	$ 4,660	$ 4,271
CVR Energy	1,432	881	1,061	1,366	1,279	1,186	1,197
CVR Refining - direct holding	-	-	-	-	-	-	-
Delek	-	-	-	-	161	134	105
Tenneco Inc	223	204	292	136	-	-	-
Total market-valued subsidiaries	$ 6,254	$ 5,143	$ 5,636	$ 6,177	$ 6,183	$ 5,980	$ 5,573
Other Subsidiaries:							
Tropicana	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Viskase	105	240	285	293	279	266	230
Federal-Mogul	-	-	-	-	-	-	-
Real Estate Holdings	458	433	440	443	441	435	472
PSC Metals	142	144	128	133	141	301	-
WestPoint Home	143	145	141	137	136	132	132
Vivus	-	-	262	270	267	262	259
Ferrous Resources	-	-	-	-	-	-	-
Icahn Automotive Group	1,737	1,654	1,554	1,558	1,516	2,540	2,561
Trump Entertainment	-	-	-	-	-	-	-
Total - other subsidiaries	$ 2,585	$ 2,616	$ 2,810	$ 2,834	$ 2,780	$ 3,936	$ 3,654
Add: Holding Company cash and cash equivalents	1,128	987	925	1,134	1,549	1,257	1,707
Less: Holding Company debt	(5,813)	(5,812)	(5,811)	(5,805)	(5,811)	(5,810)	(5,810)
Add: Other Holding Company net assets	115	185	(12)	(124)	(197)	9	(3)
Indicative Net Asset Value	**$ 4,269**	**$ 3,119**	**$ 3,548**	**$ 4,216**	**$ 4,504**	**$ 5,372**	**$ 5,121**
Indicative Net Asset Value per Share	**$19.86**	**$13.99**	**$16.05**	**$17.21**	**$17.94**	**$20.20**	**$18.22**
Share Count	215	223	221	245	251	266	281

Source: Company data

308. Unlike GAAP NAV, indicative NAV depends upon the chosen valuation methodology one applies, as well as the assumptions regarding the inputs to the valuation calculations. IEP's indicative NAV, at all times, well exceeded its GAAP NAV, as shown in the table below.

	2018	**2019**	**2020**	**2021**	**2022**
Equity attributable to Icahn Enterprises	$ 6,560	$ 5,456	$ 3,382	$ 3,544	$ 3,900
Units Outstanding	191.3661	214.0786	241.3388	293.4032	353.5722
NAV/Unit	$34.28	$25.49	$14.01	$12.08	$11.03
Indicative NAV	$ 8,152	$ 7,067	$ 3,548	$ 5,121	$ 5,643
Indicative NAV/Unit	$42.60	$33.01	$14.70	$17.45	$15.96
Indicative NAV as % GAAP NAV	**124.3%**	**129.5%**	**104.9%**	**144.5%**	**144.7%**

309. The Hindenburg Report claimed that IEP's valuation methods were misleading and resulted in inflated indicative NAVs. Plaintiffs are informed and believe and thereupon allege that there were several discrepancies in IEP's valuation methodology that resulted in inflated NAVs, as discussed below.

310. The Company held an investment in food packaging company Viskase Companies, Inc., (OTCPK:VKSC). IEP held approximately 90% of the outstanding shares of Viskase. Viskase is a publicly traded company with readily available price information for its stock. Rather than utilize the market price of the shares to value its investment, IEP chose to apply a 9x multiple to Viskase's adjusted earnings before interest, taxes, depreciation, and amortization, or EBITDA, which is a measure of operating income, to arrive at an inflated value. In December 2022, IEP purchased 1,123,363 additional shares of Viskase for approximately $0.89 per share. The market price as of December 31, 2022, was $0.86, which valued IEP's total holdings at approximately $80 million. However, based on IEP's subjective valuation methodology, it valued its investment in Viskase at $243 million, a three-fold markup from the public market price.

311. IEP had significant Automotive segment holdings, including the Automotive Services and Automotive Parts. Prior to the third quarter of 2021, the Automotive Group holdings were valued at the equity or book value of these investments. As of the second quarter of 2021, the indicative NAV for the Automotive segment was approximately $1.5 billion.

312. Beginning in the third quarter of 2021, IEP chose to apply a different valuation methodology, breaking out the Automotive Real Estate segment and, rather than carrying it at book value, management based its valuation on certain assumptions regarding property level rents, location profitability, and the types of leases in place in all locations, which management said "would provide a more meaningful measure of the assets' fair-market-value."[10] None of these assumptions were explicitly disclosed, resulting in a clear lack of transparency into a meaningful component of the valuation. It then applied "prevailing" cap rates ranging from 5.5% to 6.5%. This resulted in indicative NAV of approximately $1.2 billion.

[10] Third Quarter 2021 Earnings Presentation, November 2, 2021.

313. Beginning in the fourth quarter of 2021, Automotive Services was valued at 14.0x Adjusted EBITDA, resulting in an indicative NAV of $763 billion. Automotive Parts continued to be valued using equity or book value of the assets, at approximately $590 million.

314. The overall value of the Automotive segment, as a result of the change in valuation methodologies alone, increased the indicative NAV by approximately $1.0 billion, from $1.516 billion as of June 30, 2021 to $2.540 billion as of September 30, 2021. IEP's change in the valuation methods used to value the Automotive segment coincided with the narrowing of the gap between the Company's GAAP NAV and indicative NAV at year-end 2020. The timing of the change also seems auspicious given the Company's disclosure that the COVID-19 pandemic negatively impacted the Automotive segment business and prompted an acceleration of store closures. Such an endeavor would normally result in a reduction in value rather than a doubling of value.

315. In fact, just a little more than a year later, in January 2023, IEP's Automotive Parts segment filed for Chapter 11 bankruptcy, reducing its indicative NAV to zero ($0). The value of Automotive Real Estate was reduced to $831 million, and Automotive Services to $573 million. The indicative NAV of the Automotive Group was marked down by 45%, to $1.404 billion as compared to the $2.540 billion inflated value beginning in the third quarter of 2021.

	6/30/2021	9/30/2021	12/31/2021	3/31/2022	6/30/2022	9/30/2022	12/31/2022	3/31/2023
Automotive Services		763	952	937	851	645	490	573
Automotive Parts		590	422	493	479	490	381	0
Automotive Owned RE		1,187	1,187	1,187	1,187	1,187	831	831
Icahn Automotive Group	1,516	2,540	2,561	2,617	2,517	2,322	1,702	1,404

316. Other valuation discrepancies include the indicative NAV of IEP's Real Estate segment, which the Company values at equity, or book value. This is in contrast with the capitalized earnings method used to value Automotive Real Estate. Despite ever changing conditions in the real estate market, in general, the indicative NAV of the Real

Estate segment has not changed throughout the Class Period and continues to be valued at approximately $450 million. IEP's valuation method offers no transparency as to the true value of the Company's holdings. An example of the lack of transparency is the fact that there was no change in the value of the Real Estate segment despite the Q2 2023 default of a "significant" tenant in a Company-owned commercial high rise, resulting in the termination of the lease.

317. Revelations in the Hindenburg Report, including that IEP's indicative NAVs were overstated and that the Company's dividend payout was unsustainable given the fundamental financial performance of the Company, caused an immediate 20% decline in the price of the units from $50.42 on May 1, 2023, to $40.36 on May 2, 2023. The Company's indicative NAV fell by nearly $600 million in Q2 2023, from $5.580 billion to $5.022 billion.

DEFENDANTS' VIOLATIONS OF GAAP AND SEC RULES

318. GAAP are those principles recognized by the accounting profession and the SEC as the uniform rules, conventions, and procedures necessary to define accepted accounting practices at a particular time. GAAP principles are the official standards accepted by the SEC and promulgated in part by the American Institute of Certified Public Accountants ("AICPA"). SEC Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) states that financial statements filed with the SEC that are not prepared in compliance with GAAP are presumed to be misleading or inaccurate, despite footnote or other disclosures. SEC Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosures that would be duplicative of disclosures accompanying the most recent annual financial statements. 17 C.F.R. § 210.10-01(a)(5). Additionally, SEC registrants are required under SEC rules to maintain sufficient systems of internal controls to ensure fair reporting in conformity

with GAAP.

Duties of the Chief Financial Officer and Chief Executive Officer

319. CEO Defendants Cozza, Kekedjian, and Willetts, and CFO Defendants Cho, Willetts, and Papapostolou, during their respective tenures as CEO and CFO during the Class Period, were ultimately responsible for adopting, implementing and enforcing sound accounting policies and for establishing and maintaining a system of internal controls sufficient to result in accurate and reliable recording of transactions and the fair presentation of the Company's financial results, including its revenues and expenses, assets and liabilities, and cash flows, in the books and records, of the Company. This responsibility included adequately supporting the journal entries recording, *inter alia*, fair value of operating assets, fair value of goodwill, proper impairment of operating assets and/or goodwill, and properly accounting for and disclosing the risks related to changes in the fair value of operating assets and impairments to goodwill.

320. CEO Defendants Cozza, Kakedjian, and Willetts, and CFO Defendants Cho, Willetts, and Papapostolou, during their respective tenures as CEO and CFO during the Class Period, were ultimately responsible for executing certifications to IEP's Forms 10-Q and 10-K acknowledging such responsibilities. Such certifications, pursuant to Section 302 and 906 of the Sarbanes-Oxley Act of 2002, specifically acknowledged that CEO Defendants Cozza, Kekedjian, and Willetts, and CFO Defendants Cho, Willetts, and Papapostolou, during their respective tenures as CEO and CFO during the Class Period, and other IEP senior management, were responsible for establishing and maintaining disclosure controls and procedures, internal control over financial reporting and the fair presentation of the Company's financial statements, including related footnotes, in accordance with GAAP. Such certifications represented that the Company's consolidated financial statements: (a) did not contain any untrue statements of material facts, (b) did not omit any material facts necessary to make the statements in its consolidated financial

statements not misleading; (c) fairly presented in all material respects the financial condition, results of operations, and cash flows, to management's (*i.e.*, IEP's CEOs' and CFOs') knowledge; and (4) complied with the Securities Exchange Act of 1934. IEP's CEOs and CFOs further certified that they evaluated the effectiveness of the Company's disclosure controls and procedures and internal control over financial reporting and deemed them effective.

Generally Accepted Accounting Principles and SEC Rules

321. Regulation S-K requires the disclosure of Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"), in both annual and quarterly financial statements, to provide information "***necessary to an understanding*** of [the registrant's] financial condition, changes in financial condition and results of operations." 17 C.F.R. § 229.303(a) (emphasis added). In 1989, the SEC issued an interpretation providing guidance regarding MD&A, stating that the SEC had long recognized a "…need for a narrative explanation of the financial statements, because a numerical presentation and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance." This interpretation also stated that the general purpose of MD&A requirements is "…to give investors an opportunity to look at the registrant through the eyes of management…[,]" particularly with emphasis on the registrant's prospects for the future.[11] The SEC again, in December 2003, issued an interpretation that provided additional guidance regarding MD&A, stating that the MD&A requirements are intended to meet three principal objectives:

[11] SEC Interpretation: *Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures,* dated May 18, 1989.

> ***[T]o provide a narrative explanation of a company's financial statements that enables investors to see the company through the eyes of management;***
>
> [T]o enhance the overall financial disclosure and ***provide the context within which financial information should be analyzed***; and
>
> [T]o provide information about the quality of, and potential variability of, a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.

(Emphasis added).

322. Regulation S-K speaks to the importance of disclosures in a company's public filings and provides specific guidance on what the SEC expects to see in such filings. It requires the MD&A to include the following with respect to a company's results of operations, in relevant part:

> Describe any ***known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact*** on net sales or revenues or income from continuing operations. If the registrant knows of events that are reasonably likely to cause a material change in the relationship between costs and revenues…, the change in the relationship shall be disclosed.

17 C.F.R. § 229.303(a)(3)(ii); *see also* 17 C.F.R. § 229.303(a)(1) (emphasis added).

Specifically Relevant GAAP Requirements

323. There are additional GAAP provisions that relate specifically with respect to the Company's reporting of fair values for its operating segments, including its Automotive segment, and its failure to impair operating segment assets during the class period, including the goodwill related to its Automotive segment.

324. GAAP under ASC 820 – Fair value Measurement, explains how to measure fair value for financial reporting. ASC 820-10 establishes a fair value hierarchy that prioritizes the inputs used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurement) and the lowest priority to unobservable inputs (level 3 measurement). The

disclosure requirements in ASC 820 are intended to provide information about (1) the valuation techniques and inputs used to measure fair value, including judgments and assumptions made; and (2) the uncertainty in the fair value measurements as of the reporting date.

325. GAAP under ASC 350 includes guidance on the impairment models that should be used for testing indefinite-lived intangible assets, including goodwill. Under GAAP accounting, goodwill is not amortized but rather tested annually for impairment. ASC 350-20-35-3C provides many (but not all of the potential) examples of triggering events, including a deterioration in general economic conditions, an increased competitive environment, increases in the costs of raw materials or labor, negative or declining cash flows and changes in key personnel. One needs to compare an asset's carrying amount with its recoverable amount. When the carrying amount is greater that the recoverable amount, then one must recognize the impairment loss.

326. Defendants' Class Period misstatements and omissions about the Company's segmented assets on its condensed balance sheet, including the Automotive segment, were not reported as fair values under GAAP, nor were associated goodwill amounts timely impaired throughout the Class Period, as alleged herein, causing material and knowing violations of these GAAP.

IEP Violated SEC Regulations and GAAP by Failing to Impair Goodwill Assets

327. From the beginning of the Class Period and through the filing of the second quarter 2023 10-Q on August 4, 2023, Defendants violated GAAP in each quarterly and annual filing by knowingly or recklessly failing to impair goodwill at the Automotive Operating Segment.

328. GAAP provision ASC 350-20 applies to accounting and financial reporting for goodwill. Goodwill is defined as "an asset representing the future economic benefits arising from other assets acquired in a business combination." ASC 350-20-20.

329. Goodwill is created in an acquisition and is initially measured as the excess of the purchase price over the value of identifiable assets acquired and liabilities assumed in a business combination. ASC 805-30-30-1. IEP's goodwill and intangible assets relate primarily to the acquisition of its Automotive operating assets, Pep Boys and Auto Plus.

330. Goodwill is tested for impairment at the reporting unit level. ASC 350-20-35-1. "Impairment" as it relates to goodwill is "the condition that exists when the carrying amount of a reporting unit that includes goodwill exceeds its fair value." ASC 350-20-35-2.

331. Once a year, at the same time each year, a company must evaluate goodwill for impairment. ASC 350-20-35-28. It was IEP's policy to perform this evaluation of its Automotive Segment as of October 1 of each year, or more frequently if impairment indicators exist.

332. However, "goodwill of a reporting unit shall be tested for impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair values of a reporting unit below its carrying amount." ASC 350-20-35-30. A company must assess "qualitative factors," known as triggering events, to determine if it should perform an interim analysis. ASC 350-20-35-30 and ASC 350-20-35-3C. The "totality" of events and circumstances, including a non-exclusive list of factors included in GAAP, must be evaluated. ASC 350-20-35-3C, ASC 350-20-35-3E.

333. GAAP provision ASC 350-20-35-3C contains a non-exclusive list of examples of events and circumstances which could trigger an interim goodwill impairment test:

> a. Macroeconomic conditions such as a deterioration in general economic conditions, limitations on accessing capital, fluctuations in foreign exchange rates, or other developments in equity and credit markets;

> b. Industry and market considerations such as a deterioration in the environment in which an entity operates, an increased competitive environment, a decline in market-dependent multiples or metrics (considered in both absolute terms and relative to peers), a change in the market for an entity's products or services, or a regulatory or political development;
>
> c. Cost factors such as increases in raw materials, labor, or other costs that have a negative effect on earnings and cash flows;
>
> d. Overall financial performance such as negative or declining cash flows or a decline in actual or planned revenue or earnings compared with actual and projected results of relevant prior periods;
>
> e. Other relevant entity-specific events such as changes in management, key personnel, strategy, or customers; contemplation of bankruptcy; or litigation;
>
> f. Events affecting a reporting unit such as a change in the composition or carrying amount of its net assets, a more-likely-than-not expectation of selling or disposing of all, or a portion, of a reporting unit, the testing for recoverability of a significant asset group within a reporting unit, or recognition of a goodwill impairment loss in the financial statements of a subsidiary that is a component of a reporting unit ….

334. Once a goodwill impairment test is triggered, a company may first perform a qualitative assessment test to determine if it needs to perform a quantitative impairment test. ASC 350-20-35-3–3B.

335. IEP itself represented that the following qualitative factors, *inter alia,* were present during the Class Period for its Automotive segment:

A. lessened demand,

B. supply chain disruptions,

C. an inflationary environment,

D. the effects of COVID-19,

E. drops in the realizable value of inventory,

F. declining carrying values (related to inventory and to future cash flows) resulting from reorganization,

G. ongoing macroeconomic factors related to the automotive industry, and

H. poor financial performance.

336. If necessary, the quantitative impairment test is performed to identify and measure goodwill impairment. ASC 350-20-35-3. The quantitative test compares the fair value of a reporting unit with its carrying amount, also known as the net book value, including goodwill. ASC 350-20-35-4. If the carrying amount (i.e., the amount recorded on the books) exceeds the fair value of the reporting unit, then goodwill is considered impaired and an impairment loss is recognized in an amount equal to the difference between the fair value and carrying value, up to the amount of goodwill allocated to that reporting unit. ASC 350-20-35-6 and ASC 350-20-35-8.

337. Even before the Class period, IEP was well aware that it was carrying more value on its balance sheet for its Automotive Segment than that segment was actually worth, and it attempted to conceal that fact throughout the Class Period, through IEP's use of "indicative" NAV as a proxy for fair value.

338. Industry and market considerations, overall financial performance, and events affecting IEP's Automotive reporting unit indicated to Defendants throughout the Class Period the asset and/or its related goodwill was impaired.

339. During the year ended December 31, 2017, IEP recorded a loss of $8 million from ***marking inventory down*** to realizable value at its Automotive segment.

> In the fourth quarter of 2018, coinciding with our annual goodwill impairment analysis, we reorganized our Automotive segment's reporting units. Prior to the reorganization, our Automotive segment had two reporting units, Pep-Boys and AutoPlus, with all of its goodwill allocated to the Pep-Boys reporting unit. A goodwill impairment analysis just prior to the reorganization did not have an impact on the Pep-Boys reporting unit goodwill. Upon reorganization of the reporting units, a portion of the Pep-Boys reporting unit was reallocated to the AutoPlus reporting unit, which resulted in our Automotive segment continuing to have two redefined reporting units, Service and Parts. As a result, a portion of the goodwill was reallocated using

> a relative fair value allocation approach, which resulted in approximately 27% of the goodwill being reallocated to the Parts reporting unit. Based on our annual goodwill impairment analysis for our Automotive segment, which reflected our reorganized reporting units, we determined that the carrying value of its Parts reporting unit exceeded its fair value and as a result, ***we recognized a goodwill impairment charge of $87 million in the fourth quarter of 2018, which represented the full amount of the goodwill allocated to the Parts reporting unit***. This impairment was the result of our reporting unit reorganization, which resulted in a significant amount of carrying value of net assets being reallocated to the Parts reporting unit, primarily for inventory, with a significantly lesser fair value due to the future projected cash flows of the Parts reporting unit, which resulted in the Parts reporting unit having a carrying value in excess of its fair value. Therefore, the goodwill reallocated to the Parts reporting unit was immediately impaired. We also determined that the fair value of our Automotive segment's Service reporting unit was significantly in excess of its carrying value and therefore, no additional impairment is required. As of December 31, 2018, our Automotive segment had remaining goodwill of $241 million, which is allocated entirely to its Service reporting unit.

2018 Form 10-K at 87-88 (emphasis added).

340. In light of the excessive and obsolete inventory in the Automotive segment coming out of 2017, and the impairment to the goodwill allocated to the Parts division of the Automotive segment in 2018, the "multi-year transformational plan" that IEP implemented for its Automative segment drew questions by analysts during the year-end conference call with analysts on February 28, 2019. Dan Fannon of Jefferies asked Defendant Cozza during that call for additional information, in response to which Cozza explained:

> ***[I]t's going to be a multiple year endeavor***. ... we have about 2,000 locations between the owned and franchised service centers. But at the same time embedded in that business is also the store side of the business. Remember, ***there is about 800 stores, and the retail environment is tough, we've been trying we've been investing*** and growing out the commercial side of the business.
>
> But ***the commercial side of the business is incredibly expensive, and so there's a ton of kind of front-loaded cost in growing the commercial side of the business.*** That takes time to ultimately then fill the sales volume and to spread out that cost. ... ***I think it's going to be a grind over the next year or***

> ***year and a half, or two years of optimizing the cost structure and the supply chain and cleaning that up.*** And we're always looking at various strategies to optimize that, but it's going to take time.

At that time, Defendants were certainly aware of costs and challenges with at least 800 retail stores in its Automotive segment, as well as cost structure efforts and supply chain work that was required for those assets to generate recoverable value. *See* Fourth Quarter 2018 Conference Call.

341. During the first three quarters of 2019, Defendant Cozza continued to discuss "the process of implementing a ***multi-year transformational plan to restructure the operations and improve profitability***" in IEP's Automotive segment. *See, e.g.,* First Quarter 2019 Conference Call. Defendant Cozza acknowledged that certain adverse economic facts existed in that regard, including a "***margin rate contraction for services and parts businesses due to the reduction in vendor support funds and other unfavorable margin adjustments***". Defendant Cozza explained that the Company needed to implement a new "***plan to separate its aftermarket parts business from the service business***" and to install "CEOs for each of the parts and service businesses and establish[] a central shared service group to support both sides," all of which carried costs. (Emphasis added). *See* Second Quarter 2019 Conference; *see also* Third Quarter 2019 Conference Call.

342. Each of these then-known facts could have, and should have, been deemed by Defendants as a triggering event for impairment testing outside of the basic annual review performed by the Company. Nevertheless, during 2019, IEP did not disclose any triggers to that warranted impairment testing in its Automotive segment; on the contrary, IEP reported that its Automotive segment considered qualitative factors to determine that goodwill at its Service reporting unit did not require further testing for impairment.

343. Through 2020, Defendant Cozza continued to discuss IEP's "multi-year transformational plan to restructure the operations and improve profitability' in the Company's Automotive segment. *See, e.g.,* First Quarter 2020 Conference Call. Defendant

Cozza explained that the "company has been ***closing parts stores***". In response to questions from MidOcean Partners analyst Robert Sullivan, Cozza also noted that "due to ***the COVID-19 pandemic***" the Company had "***accelerated closures of parts stores***", stating that "we've closed ... around roughly 200-ish of the part stores." *See* First Quarter 2020 Conference Call. In response to further questioning from Sullivan about the Automotive segment, Cozza acknowledged that still had to "***optimize the supply chain and optimize the back-office, in order to be rightsized***" at the time. *Id.*

344. Each of these then-known facts could have, and should have, been deemed by Defendants as a triggering event for impairment testing outside of the basic annual review performed by the Company.[12] Nevertheless, during 2020, IEP did not disclose any triggers that warranted impairment testing in its Automotive segment; on the contrary, IEP reported that its Automotive segment considered qualitative factors to determine that goodwill at its Service reporting unit did not require further testing for impairment. *See* 2020 Form 10-K at 99. Indeed, when asked by Jefferies analyst James Steele about any "one-time" charges or costs (such as an impairment) during the second quarter conference call with analysts on August 7, 2020, Defendant Cozza flat-out denied any such charges, stating:

> I don't anticipate any material onetime costs…; actually, not only do I not see sort of onetime charges, I sort of see better operating leverage going forward.

See Second Quarter 2020 Conference Call.

345. During 2021, the Company continued to see operating circumstances in its Automotive segment demonstrating deteriorating value. IEP continued its "multi-year transformational plan to restructure the operations" of its Automotive segment, "accelerated the timeline of closing unprofitable parts stores" and experienced "store

[12] IEP also reported that during "2020, our Real Estate segment recorded an impairment of certain development property, included in other assets in the consolidated balance sheets, of $5 million, and property, plant and equipment, net of $2 million." 2020 Form 10-K at 93.

closures related to the transformation plan". *See* First Quarter 2021 Conference Call. The next quarter, CFO Defendant Willetts explained that there existed other then-existing adversity like "***supply chain lags***" and "***inflation pressure***"; and Willetts summed up the total yearly cost of ***store closings related to the transformation plan*** as approximately $67 million at the end of the second quarter of 2021. *See* Second Quarter 2021 Conference Call. By the third quarter of 2021, things at the Automotive segment appeared worse to Defendants, with lingering "***underutilized real estate locations***", "***vacant properties or properties that are undervalued***", and a loan facility for the Automotive segment that was approximately $375 million that IEP had to take-over internally (as an intercompany indebtedness). *See* Third Quarter 2021 Conference Call. By year-end, ***IEP had to report losses of $205 million attributable to "Automotive transformation losses and an inventory write down***." *See* Fourth Quarter 2021 Conference Call. Included in this amount was a fourth quarter event when "***parts took a onetime charge of approximately $56 million to write down aged inventories***." Id. And the Company also instituted a change in how it valued its Automotive segment real estate, explaining: "we revised how we estimate the fair value of our Automotive segment's owned Real Estate and its services business…." *Id*.

346. Each of these then-known facts could have, and should have, been deemed by Defendants as a triggering event for impairment testing outside of the basic annual review performed by the Company. Nevertheless, during 2021, IEP did not disclose any triggers that warranted impairment testing in its Automotive segment; on the contrary, IEP reported that its Automotive segment considered qualitative factors to determine that goodwill at its Service reporting unit did not require further testing for impairment.

347. ***Store closures*** as part of the transformational plan for IEP's Automotive segment and ***supply chain issues*** continued to plague the operating segment through the first two quarter of 2022, as other costly aspects of the transformational plan also lingered. By the end of the third quarter of 2022, IEP had replaced the CEO and COO of the

segment's units, and in the fourth quarter IEP implemented "the first phase of efficiency actions targeting corporate ***SG&A costs***." *See* Fourth Quarter 2022 Conference Call. In addition, the Company experienced "***increased inventory reserves***" and "***out of period adjustments***" in the segment. *Id*. And IEP acknowledged it was looking at how the Company reports "***excess and obsolete inventory***", "***capitalized items***" and "***yield for inventory***" in the Automotive segment. *Id*.

348. Each of these then-known facts could, and should, have been deemed by Defendants as a triggering event for impairment testing outside of the basic annual review performed by the Company. Nevertheless, during 2022, IEP did not disclose any triggers that warranted impairment testing in its Automotive segment; on the contrary, IEP reported that its Automotive segment considered qualitative factors to determine that goodwill at its Service reporting unit did not require further testing for impairment.

349. IEP marked its Automotive Parts division at $381 million in December 2022. Its key subsidiary declared bankruptcy a month later.

350. After the close of its books in 2022, but before IEP's 2022 Form 10-K was filed with the SEC, IEP reported, on February 1, 2023, that that IEP Auto Parts Holding, LLC and its subsidiaries (collectively known as "Auto Plus"), an aftermarket parts distributor held within the Automotive segment of IEP, had not fared well. According to IEP's statement, various factors negatively impacted this business as well as the industry in general, including lessened demand, supply chain disruptions, an inflationary environment, and the effects of COVID-19. As a result, on Jan. 31, 2023, Auto Plus determined to file a voluntary Chapter 11 bankruptcy case.

351. IEP stated that since acquiring Auto Plus, it had "invested significantly in transformation and restructuring initiatives and has loaned significant amounts to Auto Plus but has obviously been disappointed in the results of these investments and the continued losses that Auto Plus has experienced. As a result, IEP has determined that it would no

longer be prudent to continue to loan money to Auto Plus at this juncture unless done in connection with a restructuring process."

352. In IEP's Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, ***the Company reported a $226 million charge related to Auto Plus***, which Hindenburg Research had identified as an overvalued holding:

> With respect to our Automotive segment, we have invested significant resources in various initiatives to remain competitive and stimulate growth. Despite these efforts, in January 2023, Auto Plus filed the Chapter 11 Cases in Bankruptcy Court. As a result of this filing, the Company has determined that it no longer controls Auto Plus and has deconsolidated its investment in Auto Plus effective as of January 31, 2023 resulting in a non-cash charge of $226 million recorded in the three months ended March 31, 2023 and determined that our remaining equity investment in Auto Plus is now worth $0.

353. On this news, Icahn Enterprises' share price fell $5.75 per unit, or 15.1%, to close at $32.22 per unit on May 10, 2023.

354. Icahn Enterprises issued a press release on February 25, 2022, titled "Icahn Enterprises L.P Reports Fourth Quarter and Full Year 2021 Financial Results." The press release explained:

> Other losses included ... $205 million of Automotive transformation losses and inventory write-downs.
>
> * * *
>
> In addition, in the third and fourth quarters of 2021, we revised how we estimate the fair value of our Automotive segment's owned real estate to reflect the improvement of its real estate leasing operations and its Services business to reflect current market multiples which better reflects the fair value of the assets, both of which contributed to the positive change in indicative net asset value.

The press release also reported that a quarterly distribution of $2.00 per depositary share had been awarded by the general partner's Board.

355. On May 10, 2023, before the market opened, Icahn Enterprises filed with the SEC its Quarterly Report on Form 10-Q for the quarter ended March 31, 2023. The Form 10-Q reported a $226 million charge related to Auto Plus, which Hindenburg Research had identified as an overvalued holding:

> With respect to our Automotive segment, we have invested significant resources in various initiatives to remain competitive and stimulate growth. Despite these efforts, in January 2023, Auto Plus filed the Chapter 11 Cases in Bankruptcy Court. As a result of this filing, the Company has determined that it no longer controls Auto Plus and has deconsolidated its investment in Auto Plus effective as of January 31, 2023 resulting in a non-cash charge of $226 million recorded in the three months ended March 31, 2023 and determined that our remaining equity investment in Auto Plus is now worth $0.

356. IEP's Class Period financial statements included footnotes that are required to comply with GAAP and SEC Rules. Set forth in a footnote to IEP's financial statements entitled "Segment and Geographic Reporting", IEP reported its segment information based on the various industries in which its businesses operate and how IEP manages those businesses. In that periodic and annual disclosure, IEP provides condensed balance sheets by reporting segment, including its Automotive segment. Throughout the Class period, IEP reported misleading values for Goodwill/Intangibles and Total Assets related to its Automotive Segment on the Company's balance sheet, as follows:

IEP Condensed Balance Sheets – Automotive (in millions)

	2018	2019	2020	2021	2022
GOODWILL AND INTANGIBLE ASSETS, NET	$412	$382	$376	$362	$352
TOTAL ASSETS	$3,024	$3,495	$3,089	$2,582	$2,532

These values are misleading because of lessened demand, supply chain disruptions, an

inflationary environment and the effects of COVID-19. In addition, these values are misleading because (1) the realizable value of inventory substantially dropped as of year-end 2017 and continued through 2018, (2) the carrying value exceeded its fair value, (3) of changing carrying values (related to inventory and to future cash flows) resulting from reorganization, (4) of ongoing macroeconomic factors related to the automotive industry, and (5) of poor financial performance.

Internal Control over Financial Reporting

357. Throughout the Class Period, the Company lacked adequate disclosure controls and procedures, and internal control over financial reporting, despite Defendants' certifications and other statements to the contrary.

358. The Exchange Act requires the Company to maintain effective disclosure control and procedures, and effective internal control over financial reporting. The Company's management, including its principal executive and financial officers, must evaluate (a) the effectiveness of its disclosure controls and procedures as of the end of each fiscal quarter-end, (b) the effectiveness of its internal control over financial reporting as of the end of each fiscal year-end, and (c) any changes in its internal control over financial reporting that occurred during each fiscal quarter that materially affected, or were reasonably likely to materially affect, its internal control over financial reporting. 17 C.F.R. §§ 240.13a-15, 240.15d-15. SEC Regulation S-K requires the Company's principal executive and financial officers to quarterly and annually, as applicable, disclose the conclusions of such evaluations. 17 C.F.R. §§ 229.307, 229.308.

359. Further, in connection with the Sarbanes Oxley Act of 2002, the tenets of which have now been incorporated into Regulation S-K, management of public companies is required to report, at least annually, on the effectiveness of the company's internal controls over financial reporting. The ultimate goal of this process is for company

management to express an opinion on the effectiveness of the company's internal control over financial reporting because a company's internal control cannot be considered effective if one or more material weaknesses exist. 17 C.F.R. § 229.308.

360. The Company's disclosure controls and procedures, and internal control over financial reporting, were not effective throughout the Class Period because of the existing material weaknesses described herein. Defendants caused the Company to issue financial statements that were, because of the violations described herein, not in conformity with GAAP and SEC rules.

361. Specifically, the Company's wrongfully reported assets that were not fair values of the operating segments, including Automotive. Instead, these values were determined solely by the Company's chief financial and executive officers, with some modest participation from the segments, and, as such, completely and intentionally overrode the Company's internal controls and governing committees, which resulted in, and was foreseeably likely to have resulted in, the material misstatements of the Company's financial statements, as alleged herein. Thus, Defendants' Sarbanes Oxley certifications regarding the effectiveness of the Company's internal controls were untrue.

362. For the foregoing reasons, Defendants caused the Company's financial statements, including the related footnote disclosures thereto, as of and for the years ended December 31, 2018 through December 31, 2022, and related Forms 10-K (the "relevant annual financial statements"), as well as interim financial statements as of and for the quarterly periods ended March 31, June 30, and September 30, in each of those years, and related Forms 10-Q (the "relevant interim financial statements" and, collectively, the "relevant financial statements") to not present fairly, in conformity with GAAP and SEC rules, the Company's financial position and results of operations.

363. In addition, the Company acknowledged that the Automotive segment was subject to a multi-year transformational plan that impacted the very controls over financial reporting and disclosure controls that are the subject of the sworn certifications

acknowledged by the Defendant CEOs and CFOs. For example, throughout the Class Period, IEP had no formal policy for reserving for or writing down excessive and obsolete inventory, an issue that was discussed by Defendants during quarterly conference calls with analysts, but not addressed to completion during the class period. Another example was the plan to separate the parts business from the service business, which required numerous personnel and operational changes, including the replacement of the segment's CEOs and COOs, none of which was resolved to finality during the Class Period. The optimization of the so-called "back office" left open too many variables for the Defendant CEOs and CFOs to have executed their controls certifications with certainty. As such, the quarterly controls certifications that they executed were signed recklessly, especially during quarters where the Automotive segment experienced "out-of-period adjustments", like in the fourth quarter of 2022. *See* Fourth Quarter 2022 Conference Call.

CLASS ACTION ALLEGATIONS

364. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Icahn Enterprises depositary units between August 2, 2018 and August 3, 2023, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

365. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Icahn Enterprises' shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least hundreds or thousands of members in the proposed Class. Millions of Icahn

Enterprises shares were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by Icahn Enterprises or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

366. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

367. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

368. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Icahn Enterprises; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

369. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of

the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

370. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of IEP securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about Icahn Enterprises' business, operations, and prospects as alleged herein.

LOSS CAUSATION

371. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiffs and other members of the Class. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment and false picture of the Company and its dividend practice, and the value of its assets, and its adherence to GAAP, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiffs and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

372. During the Class Period, Plaintiffs and the Class members purchased IEP securities at artificially inflated prices and were damaged thereby. The price of the Company's securities declined significantly when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were disseminated and publicly revealed.

373. During the Class Period, the Defendants materially misled the investing public, thereby inflating the price of IEP securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about, *inter alia*, IEP's business, operations, financial performance, dividend inducement scheme, and true asset values, as alleged herein.

374. The Defendants' materially false and/or misleading statements, as alleged herein, resulted in the Plaintiffs and other members of the Class in purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed in a series of partial corrective disclosures including those on May 2, 2023, May 10, 2023, and August 4, 2023, causing the trading price of IEP's common stock to materially decline, and removing the previously embedded artificial inflation.

375. On May 2, 2023, the Hindenburg Report disclosed, among other things, that IEP's "last reported indicative year-end [net asset value] of $5.6 billion is inflated by at least 22%." While noting that Icahn had not disclosed basic metrics around his margin loans like loan to value (LTV), maintenance thresholds, principal amount, or interest rates; the Hindenburg Report stated that "we expect Icahn Enterprises will eventually cut or eliminate its dividend entirely, barring a miracle turnaround in investment performance."

376. On this news, Icahn Enterprises' share price fell $10.06 per share, or 20%, to close at $40.36 per share on May 2, 2023; this decline in price was statistically significant after controlling for movements in the overall market (S&P 500) and in the industry sector (YFINLX Index).

377. Then, on May 10, 2023, before the market opened, Icahn Enterprises filed its First Quarter 2023 Form 10-Q, stated that the U.S. Attorney's office for the Southern

District of New York contacted Icahn Enterprises on May 3, 2023, seeking production of information relating to the Company, certain of its affiliates' "corporate governance, capitalization, securities offerings, dividends, valuation, marketing materials, due diligence and other materials." The First Quarter 2023 Form 10-Q also reported a $226 million charge related to Auto Plus.

378. On this news, Icahn Enterprises' unit price declined $5.75 per share, or 15.1%, to close at $32.22 per share on May 10, 2023; this decline in price was statistically significant after controlling for movements in the overall market (S&P 500) and in the industry sector (YFINLX Index).

379. Finally, on August 4, 2023, before the market opened, the Company disseminated a press release to the market entitled "Icahn Enterprises L.P. (Nasdaq: IEP) today announced its Second Quarter 203 Financial Results" ("Second Quarter 2023 Press Release"). Now that Mr. Icahn's massive personal loans were no longer tethered to IEP's trading price through loan covenants with required LTV ratios, he had no further need to continue the dividend inducement scheme. IEP revealed a new approach to dividends, stating: "[T]he payment of future distributions will be determined by the board of directors quarterly, based upon current economic conditions and business performance and other factors that it deems relevant at the time the declaration of a distribution is considered." Then, despite claiming that IEP would not let the Hindenburg Report "interfere with this practice," IEP lowered the boom on investors by revealing that "IEP is declaring a $1.00 per depositary unit distribution" for the second quarter, the lowest quarterly dividend distribution since even before August 6, 2013. IEP also disclosed that its second quarter 2023 net loss, included a onetime $116 million loss related to a loan receivable from Auto Plus in connection with its bankruptcy. Released from his personal debt covenants' loan-to-value ratios being tethered to stock price performance, Icahn no longer had to continue the charade to buoy or inflate the trading price of IEP units by delivering generous quarterly dividends to investors in what was, in large part, a dividend stock, in order to avoid a

massive margin call.

380. On this news, the trading price of IEP depositary units substantially declined from $32.68 per unit at the close of trading on August 3, 2023 to close at $25.09 on August 4, 2023, on historic trading volume of over 11,282,300 units in a single day; this decline in price was statistically significant after controlling for movements in the overall market (S&P 500) and in the industry sector (YFINLX Index). The trading price of IEP units continued to decline thereafter, falling to $15.52 by November 1, 2023, as illustrated above.

381. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiffs and the Class. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

FRAUDULENT SCHEME AND COURSE OF BUSINESS

382. Defendants are liable for: (a) making false and misleading statements; (b) failing to disclose and concealing adverse facts known to them about IEP; and (c) engaging in a fraudulent and deceptive scheme and course of conduct. Defendants' fraudulent scheme and course of conduct that operated as a fraud or deceit on purchasers of IEP common stock was a success. Among other things, it: (a) deceived the investing public regarding IEP's true net asset valuations, status, and strength; (b) deceptively induced false investor confidence in its ongoing practice of paying significant dividends in good and bad times; and (c) artificially inflated the prices of IEP common stock for Icahn's personal benefit and IEP capital infusions; and (d) caused Plaintiffs and other members of the Class to purchase IEP units at inflated prices.

ADDITIONAL ALLEGATIONS SUPPORTING DEFENDANTS' *SCIENTER*

383. Defendants' material misstatements and omissions, as alleged above, were made intentionally, knowingly, and/or with deliberate recklessness, and had the purpose and effect of, among other things, concealing the adverse truth about IEP's Net Asset Values, deceptive scheme, and the true strength as a dividend stock from the investing public, consequently buoying an artificially inflating the trading price of IEP's units. In addition to the foregoing, the following facts, when viewed in their ***totality***, demonstrate a ***strong inference*** that the Defendants' false statements and material omissions, and their deceptive scheme, were made with actual knowledge of their falsity and deception, or with deliberate recklessness, i.e. *scienter*.

384. Defendants had strong motives to engage in the fraudulent scheme and/or artificially inflate the price of IEP shares, and the opportunity to do so, by reason of their high-level positions and ability to disseminate false information or deceptively misleading asset valuations, while the Icahn controlled Board purposely induced investor confidence by declaring constant, through arbitrarily set, quarterly distributions bearing no relationship to IEP's actual financial results, providing additional indicia of and supporting a strong inference of *scienter*.

385. There were acute, company-specific motives and strategies behind Defendants' NAV cherry-picking, delayed impairment charge, and the dividend inducement scheme, designed to prop up and artificially inflate the price of IEP units, and especially to save Carl Icahn, the controlling shareholder and effective owner of IEP, from massive margin calls on his personal indebtedness. And Defendants were motivated to enable the Company to acquire cash to fund the dividend inducement scheme through secondary offerings at inflated share prices using fewer shares so as not to diminish Mr. Icahn's personal stake and control.

386. Further *indicia* of *scienter* can be found in IEP's reliance on, and extensive use of, non-disclosure agreements ("NDAs") for senior executives and corporate officers.

These NDAs substantially inhibit and frustrate the disclosure of wrongdoing by Defendants or other forms of "whistle blowing." The NDAs are required as a condition of employment by IEP and, on information and belief, include substantial and onerous terms and penalties for violation.

Strong Inference of *Scienter* Arising from a Matter Involving "Core Business Operations"

387. Carl Icahn built an iconic reputation as an "activist" investor purchasing distressed companies and assets, after which he then deployed techniques that increased the value of those assets, thereby turning a profit for himself and others. Over the course of many decades of valuing and acquiring assets, including those that he had acquired through IEP, and during the Class Period, Mr. Icahn developed a highly sophisticated expertise and ability with respect to asset valuation regarding a wide panoply of companies that he acquired alone or with others.

388. Valuing companies, including their assets and profitability and prospects for growth, was a matter of expertise with respect to Icahn. It was also a core business operation of IEP as a publicly traded equity fund that essentially engaged in the valuation and acquisition of other companies, while also engaging in long and short-term investments through IEP's investment arm. Defendants effectively admitted or portrayed IEP management and Icahn as acutely expert in determining the true valuation of companies by claiming that IEP's valuation methodology – so-called "Indicative Net Asset Value" – was more "indicative" of true value than a methodology under GAAP.

389. It is reasonable to infer from their expertise, and especially that of Icahn's, that they knew the truth with regard to the asset valuations of the segmental entities that were the subject of the Hindenburg Report, and that were overvalued, artificially inflating IEP's total asset values, which, in turn, mislead and deceived investors.

Defendant Icahn's Dominance and Control Support *Scienter*

390. Even before the inception of the Class Period, IEP was essentially Mr. Icahn's own personal equity fund. He was in complete and dominant control of his own corporation, not only as its most dominant and majority shareholder, but also by reason of his position as chairman of its Board of Directors. Icahn was, at all times material, and remains, the effective epicenter of the IEP enterprise. This domination and control by Icahn persisted even after the Company's IPO and throughout the Class Period. He dominated the IEP Board of Directors, which was at his beck and call, since he controlled a majority of the shares and therefore was able to determine who would be on the Board and who would not, and by extension, who would be, hired to serve in C-Suite or Executive officer positions at IEP.

391. Icahn spoke to the market at various times during and before the Class Period, reflecting his involvement in the Company. Mr. Icahn's *scienter* is further strongly inferred from his approximately 85% share ownership of IEP depositary units, and his domination over IEP's operations and Board of Directors. IEP's Annual Reports on Form 10-K for each fiscal year ending December 31, 2017 through December 31, 2022, acknowledge that:

> ***Our general partner, and its control person, has significant influence over us.***
>
> Mr. Icahn, through affiliates, owns 100% of Icahn Enterprises GP, the general partner of Icahn Enterprises and Icahn Enterprises Holdings, approximately 92.0% of Icahn Enterprises' outstanding depositary units as of December 31, 2019, and, as a result, has the ability to influence many aspects of our operations and affairs.

392. IEP's Annual Reports on Form 10-k for the years ending December 31, 2017-2019 and 2022 further acknowledge that on of its "Core Strength[s]" is:

> *Drive Accountability and Financial Discipline in the Management of our Business.*

> Our CEO is accountable directly to our Board of Directors of our general partner, including the Chairman, Carl C. Icahn, and has day-to-day responsibility, in consultation with our Chairman, for general oversight of our business segments. We continually evaluate our operating subsidiaries with a view towards maximizing value and cost efficiencies, bringing an owner's perspective to our operating businesses. In each of these businesses, we assemble senior management teams with the expertise to run their businesses and board of directors to oversee the management of those businesses. Each management team is responsible for the day-to-day operations of its businesses and directly accountable to its board of directors.

A Strong Inference of *Scienter* Arises from Mr. Icahn's Fiduciary Duty as a Majority Shareholder to the Minority Shareholders – Plaintiffs and the Class Members

393. Unlike many other publicly traded companies, IEP is largely owned by Mr. Icahn and his affiliates. He has been IEP's majority shareholder at all times material. As the majority shareholder of a Delaware corporation, Icahn is obliged to act as a fiduciary with respect to IEP's minority unitholders, Plaintiffs and the members of the Class. Mr. Icahn's fiduciary duties obligate him to act with due care and loyalty and not to act for his own personal interest at the expense or detriment of the minority unitholders. To adhere to this fiduciary duty, Mr. Icahn was duty bound to be familiar with the valuations of the assets of the IEP portfolio, the adverse events associated with and negatively impacting valuations of segmental assets of the IEP portfolio, especially, but not limited to, those identified in the Hindenburg Report. He was also duty bound as majority unitholder and Board Chairman, to know what the dividends being paid were, and the basis for declaring them. Hence, he knew that they were not tethered to financial performance, but were used to induce demand for an investment in IEP units, and that the Company was using so-called "indicative net asset values" rather than GAAP to assess values, despite the fact that utilizing GAAP methods resulted in materially lower valuations, including with respect to the NAVs associated with the business segments documented in the Hindenburg Report. Mr. Icahn was aware of this scheme and he, with the rubber stamp approval of the IEP Board of Directors, was granting dividends that were simply not tethered or linked to

financial performance, were unsustainable, and were being used to induce investor demand and buoy and inflate the Company's stock price.

Defendants' Net Asset Value Cherry Picking and Lack of Transparency Supports a Strong Inference of *Scienter*

394. In every quarter and for every fiscal year during the Class Period, the Individual Defendants, including Icahn, established values for IEP's assets, including segmental values, as more fully discussed above.

395. By Defendants' own admission, during conference calls and in their reported financial results, as more fully reflected above, they selected the methodologies used to value net assets.

396. Reported "indicative net asset value" did not truly reflect asset values – as the Hindenburg Report revealed on May 2, 2023 – and at times were significantly higher than GAAP based valuations. The lack of transparency with respect to asset values and selecting and using so-called "indicative net asset" valuation was the product of a purposeful decision and practice by IEP management, which is evident from IEP's own disclosures.

397. The Indicative NAVs were set in a manner that was intended to reflect higher value, especially in contrast to what the NAV values would have been had they been valued and reported in accordance with GAAP – which would have resulted in lower valuations. Engaging a lack of transparency respecting asset valuations, management was effectively cherry-picking with respect NAV's in which asset values – an important factor upon investing in an entity such as IEP – could not be truly evaluated by investors.

398. The cherry-picking respecting the NAV method being deployed by management during the Class Period is, in itself, the function of management's own knowing and intentional conduct. It is an indicium of a strong inference of *scienter* that so-called Indicative Net Asset Values were being manipulated, and consequently inflated,

in contrast to how they would have been valued had management utilized GAAP, even while the "Indicative Net Asset Value" selected by management was portrayed as "more indicative" of the true value of IEP assets. Thus, the asset valuations reported by IEP with respect to the segmental asset values noted in the Hindenburg Report discussed above, were inflated – and the Individual Defendants obviously knew it since they are the ones who deployed those deceptive methodologies, and created the lack of transparency.

Using IEP Units as Currency to Secure Capital to Prop Up Liquidity Supports *Scienter*

399. During the Class Period, IEP experienced inconsistent financial results, which could have put downward pressure on the payment of healthy dividends to unwitting shareholders which, in turn, could place negative pressure on the trading price of IEP units, and, in turn, create adverse risk with respect to Icahn's personal indebtedness and net worth.

400. In order to prop up the Company's liquidity and cash flows, and, in turn, fund the dividend inducement scheme which was being relied upon by Icahn and the Defendants to buoy and inflate IEP's unit trading price, IEP entered into a series of unit offerings during the Class Period, as more fully discussed above. These offerings of units to the market were at prices and unit amounts as follows:

Fiscal Quarter	Proceeds (in millions)	Depositary Units Offered	Average Price per Unit
Q2 2019	$10	137,524	$72.71
Q3 2019	$24	349,699	$68.63
Q4 2019	$20	307,126	$56.12
Q1 2020	$7	107,131	$65.34
Q2 2020	$19	374,113	$50.79
Q3 2020	$34	637,352	$53.35
Q4 2020	$41	789,503	$51.93
Q1 2021	$184	3,109,345	$59.18
Q2 2021	$200	3,509,574	$56.99
Q3 2021	$220	4,164,179	$52.83
Q4 2021	$229	4,387,421	$52.19
Q1 2022	$182	3,436,553	$52.96

Q2 2022	$212	4,110,226	$51.58
Q3 2022	$163	3,130,267	$52.07
Q4 2022	$202	3,942,226	$51.24
Q1 2023	$175	3,395,353	$51.54

401. The Icahn offerings collectively reaped over $1.5 billion in new capital infusions, thereby buoying the Company's liquidity and providing ample funds to pay cash dividends pursuant to the dividend inducement scheme after the Company materially increased the dividends compared to pre-Class Period levels.

402. IEP was motivated throughout the Class Period to prop up the trading price of IEP units and, in turn, used the offerings of units in order to do so, all the while failing to disclose the adverse truth, as set forth above.

A Strong Inference of *Scienter* Arising from the Scheme to Issue Significant and Consistent Dividends to Buoy and Inflate the Trading Price of IEP Units to Avoid Debt Margin Calls Respecting Defendant Icahn's Massive $3.7 billion Margin Loan Indebtedness

403. Prior to the advent of the Class Period, IEP never paid any quarterly dividend as high as $2.00 per share, or $8.00 per annum, collectively. In August 2011, the quarterly per unit dividend was increased from $0.50 to $1. The Icahn-controlled Board increased the quarterly dividend to $1.25 per unit in August 2013, then to $1.50 per unit per quarter on March 11, 2014. The quarterly dividend increased to $1.75 per unit, per quarter, on March 9, 2018, for a total of $7.00 per depositary unit for the entire fiscal year of 2018.

404. Beginning on September 5, 2018, the trading price of IEP's depositary units declined from a close of $73.11 per unit on September 4, 2018 to a close of $67.01 per unit on September 5, 2018, and continued to languish thereafter through February 26, 2019, when the trading price of its depositary units closed at $70.39 per unit.

405. With IEP unit prices languishing for a sustained period – approximately almost six months – pressure obviously mounted on Icahn with respect to using even

greater amounts of IEP units as collateral to acquire new funds for his personal needs and projects, or to otherwise payoff older maturing potential indebtedness that he had amassed. The decline of IEP unit trading prices also posed a threat given debt covenant LTV ratios imposed on Mr. Icahn respecting his personal margin loans, which were tied to IEP's trading price on the open market and the potential for triggering a margin call that would require him to come up with substantial amounts of his personal assets or otherwise lose control of his company by divesting the shares that he pledged as collateral.

406. In an effort to increase investor confidence in IEP and inflate the trading price of its depositary units, even in the face of uneven financial results, the IEP Board, which Icahn controlled and chaired at all times material, declared on February 26, 2019, a quarterly dividend raising it from $1.75 per depositary unit to $2.00 per depositary unit for the quarter, for unit holders of record at the close of business on March 11, 2019 – payable in cash or, if elected, in additional depositary units. Mr. Icahn would receive his dividends on his significant holdings of approximately 85% by receiving additional units, thereby preserving if not strengthening, his control.

407. The announcement of the Icahn-controlled Board's decision generated investor enthusiasm and, in turn, inflated the trading price of IEP units from a close of $70.39 on February 26, 2019 before the $2.00 per unit quarterly dividend was declared, to $72.00 on February 27, 2019 and then, to a close of $74.29 per unit on February 28, 2019.

408. Icahn's scheme to buoy or otherwise inflate IEP's unit trading price was successful in that its trading prices would have been materially lower but for the dividend hike that translated to $8.00 per unit annually through fiscal years 2019, 2020, 2021, and 2022 – a sustained significant dividend of $2.00 per quarter for a period of four years – all the while without disclosing the adverse truth about IEP's true segmental net asset values when appropriately valued, which they were not – and without adequately and fully disclosing the investors' true dividend risk and vulnerability.

409. Mr. Icahn was highly motivated to set and declare the higher, unsustainable $2.00 per unit quarterly dividend, despite the financial results of IEP, as a measure to halt or reverse declining unit trading prices, in order to buoy and inflate those prices so as to avoid margin calls on his personal indebtedness.

410. The deception of the market is evident from the fact that even Jefferies, a major analyst that continuously followed the Company, repeatedly modeled during the timeframe – when the Company was declaring quarter after quarter after quarter a $2.00 per unit dividend despite inconsistent financial results – $2 per unit quarterly dividend "in perpetuity," while it consistently issued a "buy" recommendation with respect to IEP units. Icahn's use of this dividend inducement scheme provides an ample and strong inference that he knew that IEP's segmental NAVs were materially inflated that by sustaining this dividend pursuant to the dividend inducement scheme, he was buoying and inflating the trading price of IEP units and that, in doing so, he was continuing to avoid a massive margin call with respect to his personal indebtedness, mindful that his margin loans obligated him to debt covenants with loan-to-value ratios linked to the trading price of IEP depositary units.

411. Mr. Icahn's deployment of this deceptive dividend inducement scheme to raise investor confidence, while at the same time buoying or inflating the price of IEP units beyond what they otherwise would have been had the dividends been significantly lower, was done for his own personal benefit. As a majority shareholder, the dividend inducement scheme flew in the face of his fiduciary duty to the minority shareholder interest – Plaintiffs and Class members herein – who were ultimately damaged by that deceptive scheme amid a series of false and misleading statements and material omissions.

412. Given the exposure that Mr. Icahn was presented with as a result of his personal margin loan indebtedness estimated at $3.7 billion, and the threat that poor stock price performance created by reason of his debt covenants, he was strongly motivated to engage in acts and practices that inflated IEP's depositary unit price performance and, this

motivated the fraudulent misrepresentations and the related fraudulent scheme, as alleged above.

413. The pressure on Icahn to continue the unsustainable $2.00 per quarter, per unit, dividend throughout the Class Period in order to stave off IEP's depositary unit price declines exposing him to a massive margin call, remained constant until he navigated a massive margin call dilemma by restructuring his $3.7 billion debt, and delinking the LTV ratios from IEP's stock price.

414. Once that delinking occurred, his motive to use the heightened dividend in a scheme to deceive the market evaporated. Hence, in the second quarter of 2023, the Icahn-controlled Board lowered the dividend dramatically, to a level not seen since before August 2013.

Scienter Arising from Acknowledgment of Reading and Responding to the Hindenburg Report, Prior to Issuing Additional False Statements After May 2, 2023

415. IEP's press releases and statements disseminated to the market on May 4, 2023, and May 10, 2023, respectively, tacitly admit and demonstrate that Mr. Icahn and the Company's then current CEO and CFO were aware of and had reviewed the Hindenburg Report. Certainly, by that time, without any doubt, they knew the facts regarding inflated asset valuation and the circumstances relating to jeopardizing IEP's dividend, and related revelations to the market contained in the Hindenburg Report, though they elected to falsely deny or deflect them.

APPLICABILITY OF PRESUMPTION OF RELIANCE
(FRAUD-ON-THE-MARKET DOCTRINE)

416. The market for Icahn Enterprises' securities was open, well-developed, and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Icahn Enterprises' securities traded at artificially

inflated prices during the Class Period. Plaintiffs and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of Icahn Enterprises' securities and market information relating to Icahn Enterprises and have been damaged thereby.

417. During the Class Period, the artificial inflation of IEP units was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiffs and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Icahn Enterprises' business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Icahn Enterprises and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements and deceptive scheme and course of conduct, during the Class Period resulted in Plaintiffs and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

418. At all relevant times, the market for Icahn Enterprises' securities was an efficient market for the following reasons, among others:

(a) Icahn Enterprises shares met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, Icahn Enterprises filed periodic public reports with the SEC and/or the NASDAQ;

(c) Icahn Enterprises regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other

wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) Icahn Enterprises was followed by securities analysts employed by brokerage firms or investment management firms, and investment managers, for example UBS and Jefferies, who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

419. As a result of the foregoing, the market for IEP securities promptly digested current information regarding Icahn Enterprises from all publicly available sources and reflected such information in Icahn Enterprises' share price. Under these circumstances, all purchasers of Icahn Enterprises' securities during the Class Period suffered similar injury through their purchase of Icahn Enterprises' securities at artificially inflated prices and a presumption of reliance applies.

420. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations, business risks, material risks, true asset values, and financial prospects—information that Defendants were obligated to fully and adequately disclose and/or speak truthfully about them when speaking to the market—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, including the concealed dividend inducement scheme, that requirement is satisfied here.

NO SAFE HARBOR

421. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward- looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Icahn Enterprises who knew that the statement was false when made.

FIRST CLAIM

Violation of Section 10(b) of The Exchange Act and Rules 10b-5(a)-(c) Promulgated Thereunder Against All Defendants

422. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

423. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive

the investing public, including Plaintiffs and other Class members, as alleged herein; and (ii) cause Plaintiffs and other members of the Class to purchase Icahn Enterprises' securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

424. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Icahn Enterprises' securities in violation of Section 10(b) of the Exchange Act and Rules 10b-5 (a)-(c). All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

425. Defendants, individually and in concert, directly and indirectly, by the use, means, or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Icahn Enterprises' financial well-being and prospects, as specified herein.

426. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Icahn Enterprises' value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Icahn Enterprises and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

427. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these Defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these Defendants enjoyed significant personal contact and familiarity with the other Defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these Defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

428. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Icahn Enterprises' financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

429. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts and conduct constituting a deceptive

scheme, as set forth above, the market price of IEP securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements, omissions, and deceptive scheme by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiffs and the other members of the Class acquired IEP securities during the Class Period at artificially high prices and were damaged thereby.

430. At the time of said misrepresentations and/or omissions, Plaintiffs and other members of the Class were ignorant of their falsity and believed them to be true and were ignorant of or were deceived by the deceptive scheme, *i.e.*, the dividend inducement scheme, as alleged above. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding the problems that Icahn Enterprises was experiencing, which were not disclosed by Defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their Icahn Enterprises securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

431. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

432. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

SECOND CLAIM

Violation of Section 20(a) of The Exchange Act Against the Individual Defendants

433. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

434. Individual Defendants acted as controlling persons of Icahn Enterprises within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision- making of the Company, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

435. In particular, the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

436. As set forth above, Icahn Enterprises and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, the Individual Defendants

are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: January 12, 2024

Respectfully submitted,

By: *<u>/s/ Jeffrey A. Barrack</u>*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was filed on January 12, 2024, with the Court via the CM/ECF system, which will send notification of such filing to all attorneys of record.

By: */s/ Adam M. Moskowitz*
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